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Very Truly Yrs
Sam'l W. Pennypacker

THE

# PENNSYLVANIA MAGAZINE

OF

# HISTORY AND BIOGRAPHY.

VOL. XLI. 1917. No. 1.

## THE LIFE AND SERVICES OF SAMUEL WHITAKER PENNYPACKER.

BY HAMPTON L. CARSON.

*Fellow Members of The Historical Society of Pennsylvania; Ladies and Gentlemen:*

This meeting is held to commemorate the life and services of one who loved to enter these halls, and who will enter them no more. His active membership began in March, 1872. In 1876 he became a Councillor, in 1885 a Vice President, and in 1900 he became President, and was re-elected for sixteen successive years, holding the office at the time of his death—September 2nd, 1916. He was also one of the Trustees of the Gilpin Library, the Dreer Manuscripts Trust, the Publication Fund and the Building Fund. In all these positions he served us without stint of strength or lapse of interest. The importance, the variety and laboriousness of the duties circumscribed by this circle of offices can be best appreciated by his colleagues, who bear cheerful testimony to his fidelity, his zeal and his effectiveness. It is no exaggeration to say that the promotion of the purposes of this great Institution formed a serious part of his labors in life, nor is it too much to say that during his admin-

istration his spirit controlled and animated our deliberations. A meeting from which he was absent was like an engine under half steam; a meeting at which he was present moved under full pressure. The bow of Ulysses now stands against the wall unstrung, and none there be in all Ithaca who can bend it.

Ancestry.

His character, while in the main simple in its outlines, was in many respects complex and difficult of analysis, but the key to it lies in a careful study of his ancestry. James Nasmyth, the inventor of the steam hammer, in his Autobiography, wrote these words: "Our history begins long before we are born. We represent the hereditary influences of our race, and our ancestors virtually live in us. The sentiment of ancestry seems to be inherent in human nature, especially in the more civilized races. At all events we cannot help having a due regard for our forefathers. Our curiosity is stimulated by their immediate or indirect influence upon ourselves. It may be a generous enthusiasm, or as some might say, a harmless vanity to take pride in the honor of their name. The gifts of nature, however, are more valuable than those of fortune, and no line of ancestry, however honorable, can absolve us from the duty of diligent application and perseverance, and from the practice of the virtues of self control and self help." These striking and helpful words are applicable to Samuel Whitaker Pennypacker. Those who have been baffled in their efforts to understand him, those who were puzzled by seemingly contradictory traits, those who regarded his public career as a paradox, must seek an explanation in the diverse elements of his descent, which like streams of distant origin took tinctures and tastes from the soils through which they flowed. Dutch, Norman-French, Anglo-Saxon and Welsh blood commingled in his veins. Dierck, the first Count of Holland in the ninth century, whose son married Hildegarde, the daughter of Louis of France, and

Philippa, the granddaughter of Charles of Valois, who married Edward III of England in the fourteenth century, are to be found in the first line of descent. There also were Joan of Beaufort, Elizabeth Stradling, Barbara Aubrey and Elizabeth Bevan, all of Welsh descent. In the second line, which sprang from John of Gaunt —"time honored Lancaster"—were Eleanor Somerset and Watkin Vaughan of England and of Wales. Some of these men had built churches, founded colleges or been pilgrims to the Holy Land; some had been sailors and been rescued from pirates; some had been men of restless ambition, or jolly dogs rejoicing in good living; some of these women had languished in lonely towers, ransomed prisoners, or stitched upon tapestries. As this blood filtered through dukes and earls to counts and knights and esquires, it finally became blended with that of the common people. The earliest of the Pannebakers, or, in Dutch, Pannebakkers, were tile makers in Holland, and disciples of Menno Simon, the founder of the sect now known as Mennonites. Children of persecution and often burned as heretics at the stake, their descendants welcomed the approaches of the early Quaker preachers offering them inducements to seek refuge in the land of Penn. Hendrick Pannebaker, a member of the Dutch Reformed Church, the founder of the American family, left his home in Crefelt, a city on the Rhine, near the borders of Holland, and became one of the earliest settlers in Germantown, and a friend of Francis Daniel Pastorius. His grandson, Matthias, the great-grandfather of the subject of this address, became a Bishop in the Mennonite Church. Since then the family has become widely scattered, extending from Canada to Mexico and California, and all through the eastern and middle counties of Pennsylvania, Maryland and Virginia. The men have been lawyers, judges, physicians, farmers, soldiers, authors, publishers and preachers,

and the women members of Quaker meeting, or the Church, and gentle mothers of modest citizens.

At the Pennypacker Reunion, held October 4th, 1877, our late President in describing a member of the family who had become a Senator of the United States, said: "Reverdy Johnson wrote to me of Isaac S., of Virginia, that possessing 'sterling integrity he had the confidence of every man in the Senate.' Thaddeus Stevens complained of Elijah F. that he was 'too damned honest,' and this trait, which seems to crop out even in our politicians, I think we may claim as a family characteristic." He also said: "Physically we are generally large, with dark hair and eyes, and if we could get our neighbors to repeat to us the comments they sometimes make in our absence, we would probably learn that we wear full sized stockings and are not handsome." "This pedigree," as Governor Pennypacker once wrote, "is not without a certain philosophical value," and he tersely declared: "Man is a result as well as a cause."

Personal Characteristics.

Here then you have the key to his character. He had unusual pride of ancestry combined with extreme democratic simplicity; he had an imposing carriage of the head and a rustic slouch of the body; he had a peculiar twang of utterance, but his speech was accurate and polished. While he never forgot his patrician blood he never consciously reminded one of it. On State occasions he bore himself with lofty dignity; on informal occasions with unconventional affability. I have seen him receive the President of the United States and Governors of other States, surrounded by glittering staffs, with exact but not overstrained formality, and I have seen him, even while standing in front of the Governor's chair, which was to him an emblem of authority and influence, talk easily with farmers, mine laborers and timid school teachers, in a way which disarmed embarrassment without inviting familiarity. He combined breadth of view and liberality of sentiment with

marked racial bias, his Dutch strain predominating and inspiring some of his most eloquent utterances; while singularly tolerant of other men's views he was aggressively insistent upon his own; kindly and even gentle at heart he was inflexible in the performance of duty however distasteful; a man of definite egotism, he displayed the most unselfish modesty; with an entire absence of guile and the ingenuousness of a child, he knew mankind's badness and hated evil: loyal to his friends, he refused to listen to the tale-bearer; it was not that he closed his eyes to their imperfections, but that he was sympathetically astigmatic; hospitable by nature he preferred men of Pennsylvania birth or ancestry to those coming from other States however renowned they became: he placed Rittenhouse above Franklin, and Matthew Stanley Quay above Thaddeus Stevens and Stephen Gallatin; endowed with the faculty of clearly expressing his thoughts he delighted in mystery of suggestion; serious and at times grave to sadness he rioted in humor and sparkled with wit; of the most recondite learning, he could talk with detailed knowledge of the most ordinary affairs; reluctant to provoke encounters he could and did bear himself with the most heroic and splendid courage. "He was a man; take him for all in all, I ne'er shall look upon his like again."

Parentage.

He was born in Phœnixville, Pa., on the 9th of April, 1843. His father, Isaac Anderson Pennypacker, was a graduate in medicine of the University of Pennsylvania in 1835, and Professor of Theory and Practice in the Philadelphia College of Medicine, which was later merged in Jefferson Medical College. His mother was Anna M. Whitaker, a daughter of Joseph Whitaker, a wealthy ironmaster. His grandfather was Matthias Pennypacker of Pickering, Chester County, Pa., who was a member of the Constitutional Convention of 1837; a member of the Pennsylvania Assembly, and a

corporator of the Philadelphia and Reading Railroad Company. His grandmother was Sarah Anderson, daughter of Isaac Anderson, who had been a lieutenant in the Revolution, and a member of Congress from 1803 to 1807, in the days of Jefferson, and later a Presidential Elector.

Schooling.

His earliest teachers were his parents. His mother taught him to read before he was four years old, and his father, who was skilled in observing a child's processes of thought, was his daily instructor in conduct. While still very young he attended a school in the neighborhood, kept by a Mrs. Heilig, and he well remembered the stool and the paper cap intended for "the fool." Before he was eight years old he had devoured Bunyan's Pilgrim's Progress for the story, and knew Æsop's fables by heart. Later he delighted in tales of adventure, particularly those concerning Hernando Cortez, Henry Hudson, Captain John Smith, and the American patriots, Putnam, Marion and Sergeant Champ. Then he read "Nick of the Woods," and to the end of his life he thought it the best tale of Indian warfare. At eleven he became interested in natural history, elementary astronomy and even dipped into Whitaker on Arianism. Guizot's Washington gave him an early bent toward American history, which became a passion. As a lad, he attended a public school on "Tunnel Hill," now a part of Phœnixville, and had as schoolfellows the children of the Irish workers in the iron mills and several Indian boys and girls of a Canadian tribe encamped on the Pickering creek. He was an apt pupil, and led in grammar, geography and arithmetic. He also used his fists upon one John Bradley, to whom years later, when a judge, he granted a license to sell liquor in Philadelphia. At his father's house he frequently saw the famous traveler, Bayard Taylor, and listened with boyish rapture to tales of adventure in foreign lands. He also saw

Daniel Webster, William H. Seward, Neal Dow of Maine, and younger men who in time became distinguished, among them Wayne MacVeagh. In the fall of 1854, Dr. Pennypacker removed from Phœnixville to Philadelphia, living on Chestnut Street west of 18th Street, becoming one of the founders of The Philadelphia City Institute, and of the Howard Hospital. The boy was then sent to the Northeast Grammar School under the presidency of Aaron B. Ivins, a noted teacher with a genius for mathematics. His progress was rapid, for in nine months he had passed from the Fifth form to the First. He then entered the West Philadelphia Institute, established by Professor Ephraim D. Saunders, who insisted, with the aid of a native of France, upon the exclusive use of the French language in all of the school exercises and even upon the playground. In this way the future Governor acquired a ready use of French which he never lost. His schoolmate Gregory B. Keen writes of these days: "He had come fresh from the N. E. Grammar School full of notions as to the importance of English grammar, which he ventilated freely to us youngsters who knew nothing about it, in competition with our equally strong opinions as to the value of Latin grammar, which we were all studying, and which he knew nothing about. . . . . His favorite game at school was 'shinny.'" In 1856 he had the misfortune to lose his father, who died at the early age of 44, and the family returned to Phœnixville. Already it had been planned that the boy should go to college and study law, and his preparatory studies were superintended at the Grovemont Seminary by the Rev. Joel E. Bradley, who had translated the Bible from the Hebrew and Greek. He became proficient in French, Latin and Greek, reading four books of the Æneid, the Georgics, Sallust, Horace and Livy; and the Anabasis, the New Testament, Herodotus and four books of Homer. The Latin he never

forgot, and preferred Virgil to Homer. In mathematics he mastered algebra and geometry and studied the elements of philosophy, chemistry and history. His school days ended in 1859. In preparing for the Sophomore class in Yale, he read far beyond the college requirements, but owing partly to lack of means and partly to the outbreak of the Civil War he had to abandon all thought of a college education. Various efforts were made to secure clerical positions, all of which happily failed. While acting as President of the Young Men's Literary Union, he took part in debates and public entertainments, followed by a pedestrian trip across Eastern Pennsylvania and into Maryland. He also spent a summer in the drug store of a cousin in Kensington, and in a short time sold drugs and put up prescriptions. In the winter of 1861-62 he helped to keep the books of the firm of Whitaker & Condon which sold in Philadelphia the product of his grandfather's iron furnaces. The following winter he taught a public school, consisting of about sixty pupils, on a hill near his birthplace, and it is said that never was there in that locality a better teacher, and never were pupils better prepared.

**Military Service.**

In his twentieth year he enlisted as a private in the 26th Emergency Regiment of Pennsylvania Volunteers. This was not militia service as the hasty might infer. I have been informed by the best authority that it was a service which tested patriotism, because the enlistment being for an emergency, its possible duration was indefinite, and in this respect the volunteer yielded more to the Government than the nine or twelve months men. The regiment saw service in the Gettysburg campaign, under the command of Colonel Jennings, and was in contact with White's Confederate Cavalry of Early's command at such a time and at such a place as to determine in part the scene of the great battle. It lost about 170 men who were captured by the enemy,

and, although consisting of raw recruits, acted with such firmness as to be mentioned in the dispatches of General Early. Private Pennypacker shortly afterward wrote a sprightly and interesting account of his experiences under the title of "Six Weeks in Uniform."

Law Studies.

After he was mustered out of service he entered as a student the law offices of the accomplished Peter McCall, Esq., then occupying the chair of Pleading and Practice in the Law Department of the University of Pennsylvania. A gentleman, who entered the same office shortly after Pennypacker had left it, writes me: "There was a sort of tradition among the students that he had been recognized as one of the ablest, if not the ablest of his period, and also (I think) that he had held on to his rather rugged manner and strong Republican views, untempered by the influence of Mr. McCall himself, who, as you know, was intensely Anti-Republican and whose personality did impress all of us to an extraordinary degree. Nobody could be in daily contact with him without wanting to be like him, and I rather think that Pennypacker had to make an effort not to yield a little in regard to views which I suppose I ought to label as 'reactionary' in the parlance of the present day."

After a novitiate of three years, during which he attended the lectures at the Law School delivered by George Sharswood, Peter McCall and the late P. Pemberton Morris, he was admitted to the Philadelphia Bar May 19th, 1866, and graduated from the Law Department in July of the same year. Among his fellow classmates were Chief Justice Fell, the late Judge Wiltbank, the late Judge McCarthy, and Samuel S. Hollingsworth, Silas W. Pettit, Rufus E. Shapley, George W. Biddle, Jr., B. Franklin Fisher, J. Granville Leach and the singular but picturesque Damon Y. Kilgore. His early practice was slender, and he amused himself by writing a Charade on the word Dramatic, and by

diligent attendance upon "the early meetings of the Penn Club, which were really distinctive and brought together men not affectedly Bohemian but indulging in the spirit of freedom in thought and speech and the flavor of simplicity which just suited his nature." Here he became intimate with the contributors to the *Penn Monthly* under the editorship of Wharton Barker, with Dr. Robert Ellis Thompson, and the late Judge Henry Reed, and notably with the rarely gifted Henry Armitt Brown, whom he guided over the hills of Valley Forge when preparing his wonderful oration, and to whose memory a few weeks later he paid a touching tribute.

**Historical Studies.**

In 1870 he became President of the Law Academy, which had been founded under the auspices of Peter S. Duponceau. About the same time he devoted himself to historical studies, particularly those relating to Pennsylvania; his first efforts, as he himself has described them, dating from 1873 when he formed the design of writing the history of the Mennonites, a people whom he regarded as the most interesting who had come to America. The task was one of extreme difficulty, requiring a preliminary knowledge of the German and Dutch languages. No collection of their books had ever been made in this country, and nothing of value had been published except some papers in Pennsylvania Dutch, which were descriptive rather than historical, so that the structure had to be erected from its foundation. At the end of ten years Mr. Pennypacker had mastered the languages just named, had collected books and manuscripts, pored over journals, diaries, letter-books, old deeds, wills, court records, bibles, hymn-books, the imprints of the Ephrata press, and the publications of Christopher Saur, all of which he read with ease in the original, no matter how time-stained, or, if in manuscript, no matter how crabbed the handwriting; saturating himself at the

same time with local traditions and tramping all over Montgomery, Chester and Lancaster counties upon visits to aged citizens, exploring garrets and old farm houses, and conferring with Professor Oswald Seidensticker, Julius F. Sachse, A. H. Cassel of Harleysville, who were toilers in similar fields, and particularly with Robert Ellis Thompson, who had written an article on "The German Mystics as American Colonists." The results were stated in seven papers entitled "The Settlement of Germantown, and the Causes which led to It"; "David Rittenhouse, the American Astronomer"; "Christopher Dock, the Pious Schoolmaster on the Skippack and his Works"; "Der Blutige Schau-Platz oder Martyrer Spiegel"; "Mennonite Emigration to Pennsylvania"; "Abraham and Dirck OP Den Graeff"; "Zionitsher Weyrauchs Hügel oder Myrrhen Berg." These were collected into a volume of "Historical and Biographical Sketches," published in 1883, modestly called "a torso," although, with confidence in the extent of his researches, he declared: "I believe the work so far as it has gone to be thorough, and if it should not progress to the end, I shall at least have the satisfaction of having contributed something to the history of a people who are in every way worthy of the most careful study, and who will sooner or later attract wide attention." In 1899, in a separate volume, entitled "The Settlement of Germantown," which is the ripest of his historical works, and in the papers entitled "German Immigration"; "The Dutch Patroons of Pennsylvania"; "The Pennsylvania Dutchman and Wherein He has Excelled"; "Johann Gottfried Seelig," and "Sower and Beissel," constituting important parts of his "Pennsylvania in American History," published in 1910, he confirmed and extended the outcome of his special studies based on original sources of information to be found in the vast collections of this Society.

It was this special line of work which gave him his

reputation as *the* expert in Pennsylvania Dutch history, but those who rashly fancied that he had neglected other phases of our Pennsylvania growth did not know him. He was thoroughly well informed of all that had been done by English, Welsh, Irish, Scotch-Irish, Swedish and Huguenot settlers, and on occasions would pour out a raking fire of facts which overwhelmed his opponents. As he had made the field of Pennsylvania Dutch history his own, and had been the first to make it prominent, his reputation as a specialist overshadowed his other labors.

In Politics.

In 1880 he became interested in the Anti-Third Term campaign waged against the candidacy of General Grant, and became an active member of the Anti-Third Term League of Philadelphia of which the eminent scholar, historian and publicist, Henry Charles Lea, the future Attorney General of the United States, Wayne MacVeagh, the energetic and ever active banker-citizen, Wharton Barker, the refined and intellectual Henry Reed, later a judge of Court of Common Pleas No. 3 of Philadelphia County, the zealous maltster T. Morris Perot, and spirited merchant John McLaughlin were leading spirits. They all went to Chicago in July, and met on the train the celebrated Colonel Robert G. Ingersoll, Green B. Raum of Indiana and Stewart L. Woodford, Lt.-Governor of New York, later our Minister to Spain at the outbreak of the Spanish-American War. Rarely, if ever, did I listen to as brilliant and eloquent discussions as took place by the hour in the smoking car in which Ingersoll, MacVeagh, and Woodford were the most animated participants, spurred on by questions and criticisms from Barker and Pennypacker. The Philadelphians all slept, or rather tried in vain to sleep, in the same room in the Palmer House, the cots being arranged in rows like those of a hospital ward, the men on the ends next to the door insisting that the windows be kept open, the men nearest to the

windows insisting on closing them because of a sharp breeze from the Lake, and the men in the middle arguing first with one faction and then with the other as successive experiments were made. In the morning we attended the Convention as spectators from the gallery; saw Don Cameron hand the gavel to Senator Geo. F. Hoar, heard Conkling's masterpiece in placing in nomination the man "from Appomattox and its famous apple-tree," and Garfield's speech nominating John Sherman, which attracted all eyes to him as a possible dark horse, which he subsequently proved to be. The balloting was tedious and Mr. Pennypacker and myself withdrew and returned home before the adjournment, followed by the news of the nomination of Garfield and the rout of that stalwart band of 306 who never wavered in their support of Grant. On that return journey I first became acquainted with the depth and variety of the stores of knowledge possessed by Pennypacker. He poured forth an inexhaustible stream of information on Constitutional law, history, philosophy and literature to which I listened completely overwhelmed. But the incident which impressed me most, and which I recall as though it were of yesterday, was that one afternoon a woman who occupied the opposite section from ours with a boy of about four or five years of age became train-sick and suffered from headache, and the future Governor of Pennsylvania, after binding her head with a handkerchief steeped in iced water, drew the boy to the opposite end of the car and kept him amused for more than an hour with stories of birds and animals and Indians, thus giving the mother a chance to sleep.

In 1882, Mr. Pennypacker was active in the Independent Movement, which nominated John Stewart, at present an Associate Justice of our Supreme Court, for Governor, ran for the Legislature on an independent ticket in his legislative district and was defeated, but

at a public meeting reading his famous open letter to Governor Hoyt, which led the latter to proclaim himself as in favor of the movement, causing one of the greatest political uproars of the time.

Law Practice.

At the Bar for many years Mr. Pennypacker's practice was small and rather slow in development. But in time his industry, learning and sound judgment brought to him important clients. In 1884, in the leading case of Commonwealth ex rel. Sellers vs. The Phœnix Iron Company, reported on appeal in 105 Pa. State, 111, he established, after some years of discussion, the principle that a minority stockholder in a private corporation, who was denied access to corporate records and information as to corporate affairs, might have a mandamus to compel the production of such books and papers as were essential to him for an accurate ascertainment of his rights as a stockholder, a victory which was confirmed in a second phase of the same litigation in 113 Pa. State, 563. These cases were the forerunners of that long line of authorities which have been relied upon by counsel in conducting investigations of the affairs of the huge trade combinations which in recent years have become known as Trusts. A year or two later he was retained as private counsel by an eminent banking house in a matter which attracted the attention of English solicitors, who were much impressed by the clearness and cogency of Mr. Pennypacker's views as expressed in a written opinion, and still later he prepared a most elaborate, original and satisfactory trust agreement for the guidance and control of trustees charged with the management of most important concessions from the Government of China touching the establishment of a Chinese American Bank,—a paper which, being one of the earliest, if not the earliest, of its kind, attracted the attention of Mr. Evarts, Mr. Olney and Mr. Cushing, then in the heyday of their fame as active practitioners, and which

has served as a basic model for subsequent business enterprises on similar lines.

Law Reporter.

At the same time he was carrying on special work on the literature of the law, acting as reporter-in-chief for Court of Common Pleas No. 3 of Philadelphia County, his labors in this field being reported in Vol. 2 (1876) to Vol. 23 (1888) inclusive of the Weekly Notes of Cases. In 1879 he published his Supplementary Index to the Common Law Reports arranged under titles, a work of laborious industry, which unquestionably laid a broad foundation for the legal knowledge which he subsequently displayed as a judge in administering common law principles. This was followed in 1881-84 by the publication of four volumes of an average of 580 pages each, of decisions of the Supreme Court of Pennsylvania, containing cases not to be found in the official State Reports because excluded under the act of June 12th, 1878, and known to the profession as Pennypacker's Reports. He once told me, with a twinkle in his eye, that he was often amused while on the bench by the efforts of counsel to cite cases from his own volumes, as if they had a higher authority than those officially reported. Later, he made a most important contribution to our judicial history by extracting from our Colonial Records and Colonial Archives 76 cases, coming before the judges between the years 1683 and 1713, and published in 1892 in a separate volume entitled Colonial Cases; a task of pertinacious digging through masses of other matter, much of it most wearisome, contained in 26 volumes, imperfectly indexed, and which he therefore had to examine page by page. He also delivered an Historical Address upon Congress Hall and its Associations, at the last session of the Court of Common Pleas No. 2 in that venerated building, September 16th, 1895, which takes its place with Mr. Justice Mitchell's address upon the passing of the old District Court as a classic contribution to the history of our old legal shrines.

Judicial Career.

In January, 1889, he was appointed by Governor Beaver to the vacancy in Court of Common Pleas No. 2 of Philadelphia County occasioned by the election of James T. Mitchell to the Supreme Court, an appointment made by a Governor who in 1882 had been defeated for that office in part by the exertions of the sturdy appointee, who was selected in obedience to the spirit of harmony and reconciliation which had reunited the wings of the Republican Party in Pennsylvania, as well as in recognition of his abilities and attainments. The appointment was followed by a popular election for the term of ten years, and again in 1899 by a re-election to a second term. In the year 1897 he became President Judge of his Court, through the retirement of the venerable jurist J. I. Clark Hare. His colleagues during his thirteen years of judicial service were Judges Hare, Fell, subsequently Chief Justice, Jenkins, Mayer Sulzberger who like Erskine surrendered a splendid career at the bar to wear a judicial robe, and the late Judge Wiltbank, a master of equity jurisprudence. If the action and reaction of intellect upon intellect in close associations can produce, as they must, the most agreeable as well as lasting results, then truly no years of the late Governor's entire career were more fruitful, for never in the judicial history of Philadelphia County was there at any one time in any one court a more remarkable combination and display of purely intellectual power than in the concentrated rays of minds so variously and so richly equipped. The Court was like that of the King's Bench when Mansfield, Buller, Yates and Ashhurst sat side by side.

The duties of the judges in a court of original jurisdiction, or what may be called a court of first instance, differ from those of judges in an Appellate or Supreme Court in this: the judges of the appellate court deal with facts established by the verdict of a jury or found by

an equity judge in the court below, and apply the fixed principles of law to these facts, correcting whatever errors in law may have been committed by the judges below. The judges in the lower courts, however, are charged with the difficult, delicate and onerous duties of ascertaining what the facts are in each contested litigation in order to prepare the way for a proper discharge of duty by the appellate judges. They come in contact with active life and with all the contentions, prejudices, passions and weaknesses incident to human nature in waging battles in the court room, which are a civilized substitute for the old savagery which settled disputes by force and not by law. Hence a *nisi prius* judge, as he is called, should have a knowledge of human nature, a sensitive appreciation of the merits of the controversy, infinite patience, the faculty of close attention to the evidence, and self-repression so as to guard against a too hasty determination of the matters in dispute. He must have complete knowledge of practice, of the rules of evidence, and common sense in their application, and he must be ready and dexterous in his expediting of the public business. He must be a master, moreover, of the machinery of legal business known as "Motions and Rules," and as well posted in equity proceedings as in those at common law. In these respects the demands upon the knowledge and sufficiency of a Pennsylvania judge are far more constant and exacting than those prevailing in England where the business is highly specialized.

Judge Pennypacker met these requirements to the satisfaction of the profession and of the public. His manner at *nisi prius* was admirable. He rarely interrupted counsel unless they strayed beyond the limits of the case; he ruled points of evidence promptly and firmly; his charges to juries were clear and precise. He avoided extraneous discussions of the law and mystifying qualifications of principles. In disposing of

motions and rules he was prompt and decisive. He worked in perfect harmony with his colleagues, and the result was a businesslike administration. Although thousands of cases came before him, he wrote but few opinions comparatively. A few instances will suffice to show his judicial manner.

The case of People's Passenger Railway Co. vs. Marshall St. Railway Co. (20 Phila., 203, A. D. 1890) involved the right to lay tracks upon certain streets. The opinion is characteristic of his method, but it is especially interesting as containing the germ of a thought expressed thirteen years later in his Inaugural Address and in two of the most celebrated of his veto messages as Governor. He said: "Individual property may be taken by the State by the right of eminent domain, but this power can only be exercised when it appears that the property so taken is in some way necessary for the maintenance of the general welfare. It would seem, therefore, that the citizen ought at least to have the judgment of his representatives in the Legislature, or of some one representing the Commonwealth which exercises the right, that the property so taken from him is needed for a public purpose. This Act authorizes 'any number of persons not less than five,' without regard to their responsibility, to say when a highway of the city may be entered upon and occupied by a railway. It is quite clear from observation of the ways of men and ordinary human experience that the action of these 'any number of persons not less than five' will be determined, not by a careful consideration of whether the public welfare demands it, but by the prospect of profit and advantage to be secured by themselves. If the duty of judging in so important a matter may in this way be delegated by the Legislature, and the number of railroad, railway, telephone, telegraph companies and other similar corporations, requiring the exercise of the right of emi-

nent domain, continues to increase, it can be readily seen that in the near future the control of his property by the citizen will be very much limited."

In Shepp vs. Jones, 3 Dist. Rep., 539 (1894), a disputed trade mark case, he concisely said: "No man has a right to sell his goods as those of a rival by means liable to impose on purchasers, and may be restrained by injunction, if he does so. The rule is based on honesty, and ought to be upheld."

In Comm. ex rel. vs. Gratz, et al., 5 Dist. Rep., 341 (1896), he refused to mandamus the Board of Education in the selection of a teacher, because the duty of choice lay with the Board and involved such discretion that a court could not interfere.

In Carroll vs. the City of Philadelphia, et al., and The Penn Asphalt Paving Co., 6 Dist. Rep., 397 (1897), he courageously upheld, against a combination of contractors, freedom of competitive bidding. The case was one of street paving, involving the use of asphalt. The specifications called for "sheet lake asphalt," and it was held that the advertisement for bids could not, by setting up "a standard with a double head," limit the standard to two grades known as Bermudez and Trinidad, and thus exclude competitive bidding by owners of other grades. To do so would be to limit the bidding to those who controlled the two classes. Aside from this unshackled determination the opinion is interesting as displaying his peculiar learning. In giving a history of asphalt he invoked an authority unknown to counsel, the Dutch author Joannes de Laet, whose work on Trinidad had been published in Leyden in 1630.

In refusing the application for a Charter by The First Church of Christ Scientist, 6 Dist. Rep., 745 (1897), he declared that where the purpose of a corporation is only to inculcate a creed or to promulgate a form of worship, no question can arise as to the

propriety of such purpose, because under the Constitution of Pennsylvania private belief is beyond public control, and there can be no interference with the rights of conscience, but where the purpose of a proposed corporation, as set forth in the application, necessarily imports a system for the treatment of diseases to be carried into effect by persons trained for the purpose, who may receive compensation for their services, and where the knowledge and training of such healers do not conform to the tests required by law, the courts will refuse to confirm such charter under the guise of a charter for a church or religious body.

After quoting the provisions of the Act of March 24, 1877, P. L. 42, which established a policy which the courts must be careful not to thwart, he said: "To grant this charter would be to sanction a system of dealing with disease totally at variance with any contemplated by the Act of 1877 and different from any taught in 'a chartered medical school.' It is possible," he gravely added, "that the method proposed is correct, but the most important of truths which run counter to long established and popular currents of thought must ever pass through a period of test and trial before they are accepted. Reforms are proverbially slow." Then he adds, with a touch of characteristic humor, "It may be, as we are told in *Science and Health,* that to look a tiger in the eye with faith is to send him frightened into the jungle; but men, as they are at present informed, are more apt to rely, however mistakenly, upon rifles. . . . . Should they in the lapse of time become convinced by the teachings of *Science and Health* that their course is erroneous, no doubt a future legislature will repeal the Act of 1877, but for the present its policy must be enforced."

In Madden vs. Electric Light Co., 7 Dist. Pa., 364 (1898), he held that where a majority of the stockholders of a corporation chose to make an improvident

contract, a minority interest had no redress unless the act of the majority was not in good faith. Moreover, the internal management of a foreign corporation operating under a license in Pennsylvania was exclusively under the jurisdiction of the foreign court, and could not be inquired into in Pennsylvania. The same result was reached in Hartley vs. Welsh, 8 Dist. R., 546 (1899).

In refusing a new trial in Feingold vs. Traction Co., 7 Dist. 445 (1898), he said that the true rule touching the degree of care demanded from railway officials toward infant trespassers is that force cannot be used to the injury of child trespassers, but that responsibility for care over them rested with their parents or guardians. Cars are not for the benefit of trespassers. To require the stopping of a car in order to put off intruders might be, upon certain occasions, a great embarrassment to both the company and the passengers. "A school of trespassing children could lawfully stop the running of a railroad."

In Granger vs. Pigot, 10 Dist. R. 327 (1901), he enforced the equitable principle that a trustee cannot be permitted to buy the trust property at his own sale, or secure to himself any individual benefit from such purchase. "Officers ought to be protected from the temptation to exercise their control over the acts of the corporation in such a way as to benefit themselves as individuals, at the expense of the estates for which the corporation may be trustee. We hold, therefore, that it is contrary to public policy, and against good morals, to permit the secretary of a financial corporation to buy, for his own benefit, stock held by the corporation in a trust capacity."

In Connor vs. Sterling, 10 Dist., 437 (1901), he dealt with evidence in a murder case. He ruled that a photograph, proved to have been taken from life and to resemble the person intended, might be used in evidence

for the purpose of identification; but where its offer might affect so serious a question as one of life or death, the offer ought to be accompanied with proof of the circumstances under which the photograph was taken, and of its subsequent custody and history; nor should extraneous matter be written upon its back, containing unproved statements likely to create in the minds of the jury impressions unfavorable to the defendant.

It must not be concluded by laymen from the foregoing examples of his judicial work that Judge Pennypacker discovered any new legal principles or invented anything in the realm of law. He was too good a judge to do that. It is not the function of a judge to legislate. His province is to declare and not to make the law. No better description of what a judge should be was ever given than by Alexander Simpson, Jr., in the following words:

"An ideal court, it has been said, is one in which justice is judicially administered. Necessarily, therefore, an ideal judge is one who judicially administers justice. But what a wide vista that opens! May I delay you a moment to briefly point out what it does mean as applied to a Common Pleas Judge in this State? It means not only that the judge must be honest, industrious, learned and sober, but that he must have patience to hear all that is to be said, keeping his mind receptive until the last word is spoken in argument, though his own rulings are being criticised, at the same time by appropriate inquiry bringing out all that is valuable in the argument, and yet must have a keen legal sense enabling him to understand, and often on the spur of the moment to apply to the particular case under consideration the foundation principles abstracted from the arguments and authorities presented. It means that he must be in touch alike with the individual citizen and the community as a man, solicitous

to preserve individual rights and yet equally solicitous to conserve the general public good; anxious that matters of discretion may be as few as possible, yet doubly anxious because of increased responsibility when they do arise; with abundant friendships, yet blind to the counsel and suitors before him, and to everything, whether of poverty, wealth, influence, friendship or otherwise, possessed by them, save, and save only, the facts and the law applicable to the particular case. He must have a broad and philosophical mind in a sound and healthy body; must be able to see not merely the rights and justice of the particular case, with a keen desire to decide it in that way, but to see also the effects its decision will have upon the body of the law; must be able to avoid posing for or being influenced by present public applause, and yet constantly recognizing that the greatest good to the greatest number, within the limitations necessary to protect the minority, is the end and aim of all republican government. He must steadily bear in mind the fact that the judiciary is not the law-making body in the community, and yet recognize that under the common law his decisions, on the novel questions constantly arising, may establish rules of action with the same effect as legislation. He must have the horse-sense to know that men in other walks of life than his own are actuated by motives that influence him but little; that, therefore, juries drawn from all classes of the community are better able than he is to judge of those motives, and yet be willing to take his just share of responsibility for every verdict rendered before him, and to set aside or modify it when justice so demands. It means that he must profoundly love the institutions of his country; must have a genius for and love of the law he administers; must have a proper respect for the place that he occupies, and yet be approachable; must be modest and civil, yet dignified and firm in his demeanor; must be prompt, clear and con-

sistent in his rulings, and plain, direct and concise in his charges, and yet must recognize that he is but human, and, therefore, the other lawyers who practice before him may be right and he be wrong; must loyally follow the decisions of the appellate courts, whether or not appealing to his legal sense, to the end that the law may not be looked upon as uncertain, nor made the subject of reproach; and more than all these, with an abiding sense of responsibility to his conscience and his God, he must so act as to avoid the least appearance of evil, that every one, including the unsuccessful suitors before him, will at once recognize that he does in fact possess all these qualities. He who enters a court presided over by such a judge as I have described knows at once that he has entered a place instinct with justice; though blind as the Goddess herself, he sees and feels that there justice is judicially administered."

The words just quoted are taken from Mr. Simpson's speech in placing Judge Pennypacker in nomination for a second term, and their value as a portraiture of the man is fixed by the circumstance that Mr. Simpson is well known as the most candid and outspoken critic of the judges that the Bar has seen during the past fifty years.

Nomination as Governor.

We are now to view Judge Pennypacker in a totally different rôle. In June, 1902, he was nominated by the Republican Party for the office of Governor, after a spirited contest in the Convention with the late Mr. Justice John P. Elkin of the Supreme Court. The younger men of the party led by Elkin, who then held the office of Attorney General under Governor Stone, favored Elkin, the older men, led by Senator Quay, favored Pennypacker. A sharp encounter occurred between the leaders, in which the latter won. I recall as one of the pleasantries of the occasion that Frank B. McClain, then a member of the House from Lancaster County, and now Lt.-Governor of the State, a man of

the most engaging presence and captivating powers of oratory, in seconding Mr. Elkin's nomination plucked an American Beauty rose from his button-hole and holding it above his head, exclaimed: "The red rose of Lancaster blooms for the plowboy from Indiana County." In nominating Pennypacker I countered by describing the raw recruit in blue who on the night of July 1st, 1863, had slept on the steps of the Capitol he had volunteered to defend against the invading hordes of Lee, and snatched a white rose from a bowl which stood on the table of the presiding officer. It was the white rose that won, although the victor had in his veins the blood of "time honored Lancaster."

The campaign was a warm one. Both Judge Pennypacker and his opponent, the Hon. Robert E. Pattison, who had twice been Governor, appeared upon the stump, the latter a veteran campaigner, the former without much previous experience. A writer in the *Yale Review* referring to Pennypacker has remarked: "His lot as a candidate was not a particularly happy one because he had had no experience as a campaigner. He had been accustomed to speaking his mind freely and directly without equivocation, subterfuge, or indirection. The voters of the State were not prepared for such frank declarations, but they could not escape the conviction that he was an entirely honest man, and moreover, a courageous one, even though they did not approve his backers." The writer's impressions correspond with my own, but he either failed to notice, or else omitted to express, that as the campaign went on the speaking improved and the candidacy became stronger until toward the close the result was clearly in sight. At a meeting in Chester during the last week, Democratic hopes having sunk perceptibly, Candidate Pennypacker provoked shouts of laughter by comparing the Democratic party to a turtle which had been run over in the village street, and a crowd having gath-

ered, an Irishman, who observed a slight wiggling of the tail, exclaimed: "The baste is dead but is not yet sinsible of it."

Judge Pennypacker was elected by a plurality of more than 150,000 votes.

As Governor.

The man who had been elected Governor of Pennsylvania was thus described by the gifted journalist, James Creelman, who personally traveled from New York to Harrisburg for the express purpose of seeing with his own eyes the most talked about Governor in all the States, and this too when he had been but three months in office: "A stalwart burly man . . . . of impressive physique, wide-shouldered, deep-chested, strong-limbed —such a husky frame of bone and brawn as the Boers have. He is Dutch on his father's side: otherwise he is English, German and Welsh—all stubborn bloods. His immense head, high cheek bones and narrow, pendulous gray beard suggest at once the Mandarin of Northern China. The dark eyes, the high forehead, wide at the base and narrow at the top; the dark skin, heavy jaws and short nose heighten the impression of Mongol Magisterialism. It is easy to find such a powerful, bony, almost savagely impassive countenance in the Yamens of Manchuria. The very look is Mandarin-like. The Governor was dressed in sober gray, and where stockings usually show themselves, the legs of old fashioned top boots worn in warm weather revealed the staid unfrivolous Pennsylvanian. The white refined hands alone gave a hint of the scholar and naturalist. All else was half farmer, half mandarin. . . . . The Governor's family history reaches back through two hundred years of Pennsylvania history. One of his ancestors was employed by William Penn. He was born sixty years ago and received an academic education, after which he was a school teacher. When the Civil War broke out he volunteered as a soldier. He served in the regiment which

first engaged the Confederate Army in the battle of Gettysburg. After the war he was graduated from the law school of the University of Pennsylvania and was admitted to the bar. In 1866 he was elected President of the Bancroft Literary Union and President of the Law Academy. In 1889 he was appointed Judge of the Court of Common Pleas in Philadelphia by Governor Beaver. In the same year he was elected to the same position for a term of ten years. At the time of his nomination for Governor by the Republicans he was a President Judge of the Court of Common Pleas of Philadelphia. He is President of the Historical Society of Pennsylvania and of the Philobiblon Club, Vice-President of the Sons of the Revolution and of the Colonial Society, Past Commander of the Frederick Taylor Post No. 19, Grand Army of the Republic, member of the Society of Colonial Wars, and member of the Society of the War of 1812. He is also a Trustee of the University of Pennsylvania, and a member of the Valley Forge Commission. He is the author of more than fifty books and papers. His library of early Pennsylvania publications contains over eight thousand books and manuscripts. . . . So that it will be seen that this strong-limbed cool Governor who has put his name and seal upon a law intended to intimidate the press of Pennsylvania, this lawyer who reminded his people that the Philadelphia cartoonist who caricatured his person would, a hundred years ago, have been drawn and quartered and had his head stuck on a pole, is not a political lout, not an ignorant ruffian, but a man of learning, of refined tastes, of quiet personal courage, of stainless official record on the bench and wide experience of the dignities and amenities of life."

Such was the impression made in a single interview upon a visitor coming from another State, and who regarded the Governor's relations to the press-libel law with a hostile eye. From the sketch which I have

given of his career, and from the graphic strokes of the pen portraiture I have just exhibited it is impossible to extract any elements which could be fashioned into a tool of unprincipled politicians, or into a fool in the conduct of the public business. And yet such was the effort of his critics to make him appear, when they disliked his conclusions. A review of his official acts, now that time has cooled the blood and purified the vision, will be his all-sufficient vindication. When waves beat high and boil furiously it is evident that they encounter strong resistance, and when the storm subsides the solid rock appears against which they had dashed themselves in vain.

The Inaugural Address, delivered January 20th, 1903, was a State paper of unusual merit. Apart from its literary excellence, which was to be expected from the pen of so accomplished a writer, it stated a definite policy, which was rigorously adhered to. The Governor had a statesmanlike view of the objects to be aimed at, and a determined purpose to reach them, however difficult the task. Much of the resistance that he encountered and much of the criticism and abuse that were poured upon him was due to the persistent courage with which he pursued his plans. A less clear-sighted man would have become bewildered, a less brave man would have been intimidated. He fought corporate interests, personal prejudices, entrenched customs, popular fallacies, combinations of politicians, protests of well meaning but misinformed citizens, and the concentrated fire of a hostile press without fear and without flinching. Now that ten years have passed since the close of four years of strenuous conflict it is possible to review the field with calmness and estimate the value of the victories that he won.

His Programme.

I cannot do better in indicating to you how carefully he had thought out his programme in advance, and how far he succeeded in carrying it into effect, than by ana-

lyzing his Inaugural Address, and, after stating separately each proposition, describing what he did or attempted to do, and what he finally accomplished. The Inaugural is the key to his Gubernatorial career.

He opened with a characteristic tribute to the greatness of Pennsylvania, a State with a population greater than that of England in the time of Elizabeth, twice that of Holland when the leading maritime power of the world, and twice that of the United States when Washington became President; a State of boundless resources, with princely annual revenues, and substantially out of debt; a State which paid each year for the maintenance of public schools and charities more than any other American Commonwealth, accomplishing these results without a State tax upon land or houses, and with a tax rate in her large cities less than in any other of the leading municipalities of the country. The Governorship of such a State was, therefore, an office which was one of the great executive places of the earth. No man, whatever his capacity, or what the manner in which he had been called, might approach it save with humble steps, and with a grave sense of its importance and responsibilities, and he pledged himself to see to it, so far as he might be able, that under the Constitution the laws were faithfully administered.

With judicial circumspection, a trait that was born in him and cultivated by long practice, he expressed a wish "always within reasonable limits to confer with all persons who may have facts to impart or conclusions to present," and he declared it to be his "purpose to consult especially with those who in common parlance are called politicians." He declared that "there is no more dangerous public vice than the prevalent affectation of disrespect for those who are engaged in the performance of the work of the cities, the Commonwealth and the Nation, because it is in effect an attack on popular government, and its tendency is to under-

mine our institutions." I once heard President McKinley avow similar sentiments. This was not a surrender to evil influences; it was a wise and philosophic opening of the mind to sources of knowledge which an autocratic, self-sufficient and impracticable egotist would have rejected. As a matter of fact the Governor fought and overcame politicians quite as frequently as he agreed with them when his judgment convinced him that their plans were proper.

Legislative Vices.

He insisted that "*there is too much legislation,*" that it was "far better to leave the law alone unless the necessity for change was plain." In this he agreed with Blackstone, Sharswood, and the best informed of our experienced publicists. As a result of the firm hand that he imposed on legislative action, both by advice and the exercise of the veto power, he cut the bulk of our legislation to half of what it had been before him, and what it became after him. The soundness of his position has been amply sustained by our recent experiences in struggling with a perfect mania for legislation. A statute is the panacea of the legislative quack. To enable you to appreciate this let me tell you that within the past five years the State legislatures and Congress have passed more than sixty thousand laws. He declared that "*the modern tendency to invent new crimes ought to be curbed.*" To confuse the distinction between mere breaches of contract and crimes was to bring the law itself into disrepute. Without reverting to historical illustrations he clearly had in mind the intolerable condition once existing in England when more than three hundred offences were punishable by death. He was opposed to the reckless disposition to impose imprisonment upon acts "which were never known to be offenses until they became statutory." To those of you who are not familiar with the extent of this vice let me say that within the past ten years more than one thousand laws have been passed in the aggregate in

the States and by Congress to legislate men into jail.

Here are some samples of the laws that he vetoed. Vetoes. An Act was passed making it a misdemeanor to advertise by any written notices offering legal services in a divorce case. The Governor met it by saying: "It is true that to advertise publicly is unprofessional and not to be commended, but it is not essentially a crime and not such an offense against morals and propriety as to render the offender subject to imprisonment. . . . . If our morals are to be improved in this respect by legislation, it must be by making more stringent the laws allowing divorces and not by the effort to make criminal that which is only incidental to the system." An Act made it the duty of every justice of the peace within one week after he had rendered judgment to file a transcript of the proceeding with the prothonotary of the county court, under pain of fine and imprisonment. The Governor disposed of it by saying: "There may be many reasons why a transcript could not be filed within a week. The serious illness of a justice, the destruction by fire of his docket, and many other unforeseen occurrences might prevent it, but objection is put upon the broader ground that the failure to perform such a ministerial duty is not in itself essentially a crime and ought not to be so treated." An Act prescribed imprisonment for not less than ten days or more than ninety days for practicing the occupation of barber without having obtained a certificate of registration. The Governor declared that compliance with the Act could properly be compelled by the imposition of penalties, but a failure to comply ought not to be treated as a crime. An Act was aimed at the importation and sale of carcasses of lambs or sheep with the hoofs on. The Governor tersely remarked that, "if a farmer chose to buy a slaughtered lamb from his neighbor to take to market, and the hoofs were left

on, the seller becomes a criminal. . . . . The bill is not approved." An Act made it unlawful for gypsies to encamp without written permission of the owner of the land, and punished the offence by fine and imprisonment. The Governor disposed of the matter by saying: "Under our law the owner of lands may make a lease for three years by parole (word of mouth). A lease at will or a mere license is a less estate than a lease of three years, and there seems to be no reason why the owner could not give permission by word of mouth." A bill prohibited liquor dealers under pain of imprisonment from giving away eatables in the form of meals or lunch, except crackers, cheese and pretzels. The Governor declared: "There seems to be no reason why it should be an offense for a man who is making a sale to give something in addition if he chooses to do it. If it is wrong to make a gift, why should there be an exception in favor of the pretzels and cheese? A roll or a piece of bread would appear to be as innocent as cheese. It is not wise to enact legislation which is so easily evaded. There would be no difficulty in selling the crackers, cheese and pretzels, and giving away the liquor, or in selling all for the price of the liquor." Another bill imposed imprisonment in the county jail for five days for spitting in public places. The Governor said: "The purpose of the bill appears to be an effort to make people nice and cleanly in their habits by legislation. Among the thousands of people who go to a circus, one or more may have a cold: catarrh or sudden contact between the teeth and tongue may cause a flow of saliva. Imprisonment seems to be severe punishment for yielding to what cannot always be prevented. If spittoons were provided, there would be stronger reason for such legislation. It would be better to have a well digested health regulation." An Act authorized sheriffs to acquire and maintain two bloodhounds for tracking criminals. The Governor de-

clared: "It is far better that a person charged with crime should escape than that the means provided for in this act should be used for his capture." Another Act related to the use of bottles and jars in the delivery of milk and cream. The Governor described the bill as "an example of that inconsiderate spirit which would visit with fine and imprisonment an act to which no criminality can properly attach. Articles used in trade ought not to be protected by imprisoning the people who use them, nor should the fact of their criminality depend upon a notice given by an interested owner, complaining of a misuse of the article hired."

I might give you many other illustrations, but these will suffice. The general principle underlying the Governor's vetoes was that the indiscriminate use of imprisonment took from the prison much of its effect as a restraint upon those who did evil. Juries would refuse to convict where they believed the charge ought not to be sustained, even though the facts came within the terms of a statute, and thus men would be daily taught to disregard the law.

Reapportionment.

The next subject dwelt upon in the Inaugural was the Constitutional direction that at the completion of each United States census there should be a Senatorial and Representative *reapportionment of the State.* This was a matter of vital consequence as going to the root of representative government, and avoiding the evils of "rotten boroughs." It was also a matter of much difficulty, and the task had been vainly attempted by Governor Pattison. Such was the uproar and opposition that attended his efforts that successive Governors had evaded the task, which became all the more difficult with the lapse of time. Such were the inequalities and injustices existing that Governor Pennypacker resolved upon correction. It was a long fight and a hard fight. Practical politicians, election officers, men who declared that their constituencies would be

destroyed, or party majorities disturbed if not endangered, were all in league to obstruct him. He was even told that it was mathematically impossible. At two regular sessions of the Legislature no one would undertake the preparation of a bill, though many were the conferences between the Governor and the leaders. The end of his term was approaching, and he saw this great Constitutional mandate deliberately disobeyed. Finally he undertook the task himself, mapped out a bill, submitted it to criticism, to discussion, to argument, to modification, and with a mastery of figures little suspected in political calculations and a determined purpose to do his duty which confounded the foes of change, he at last brought all opposition to an end, called a special session of the Legislature to consider nine important and pressing subjects, of which this was one, and had the satisfaction of seeing written upon the statute book a just and rational rearrangement of the political geography of the State. I recall most vividly the scenes of those three years and a half of battle, the maps that were made, the maps that were unmade, the reams of paper containing election returns, estimates of disaster, predictions of party defeat in this district or in that, the unseating of this man, and the seating of that, the groans of the dethroned, the moans of the wounded, and the final triumph of the clear-headed determined occupant of the Governor's chair, sustained as he was by the loyal support of a few who though often denounced as political leaders proved themselves to be true servants of the people. The newspapers made little of it comparatively, and the people stood in silent indifference to what had been done, but nevertheless they owe their present basis of representation to the inflexible resolution of Samuel W. Pennypacker.

Ballot Reform.

The next cardinal purpose of the Governor was the *simplification of the ballot.* The then existing ballot

law, suggested by well meaning but overzealous reformers, had proved in practice to be both cumbersome and inefficient. It needed either careful amendment or reconstruction. The Governor emphatically declared that "our system of government depended primarily upon the right of every elector to vote according to his judgment and preference, without interference by or obstruction from any other person or influence, and to have all the votes accurately counted." He pointed out that in providing the necessary means it ought to be remembered that the more simple they are and the less complicated the device the more likely are they to be effective. He urged that the plan to be adopted ought to be one easy for the voters to understand. He denounced as "mere vicious theorizing the thought that something ought to be done by means of the law to encourage any particular form of voting, making it easy for one or difficult for another," and stood for the equal rights of Independents, Prohibitionists, Socialists, Democrats or Republicans to vote their full party tickets if they so willed.

Serious attention was given to these recommendations, and various efforts were made to simplify procedure, notably by the Act of 29th April, 1903, amending the existing election laws by regulating the methods of nomination, the arrangement of groups of party candidates, and by direction as to how ballots should be printed "so as to give each voter a clear opportunity to designate his choice of candidates," accompanied by printed instructions for the guidance of the unwary or uninitiated citizen. The purity and freedom from interference of elections were guarded by provisions controlling the police force and the actions of election officers. This good work was followed up at the special session called in January, 1906, by several Acts providing for the personal registration of electors in cities of the first, second and third classes, as a condition of

their right to vote; by the establishment of uniform primaries, by prohibitions of corrupt practices, and by the restriction of the political activities of municipal officers, clerks and employees. In the study and preparation of this series of statutes, which constitute an important and valuable part of our election code, the Governor was anxious to secure the best and most just results, and was ever alert to guard against the mischiefs of impracticable reforming enthusiasms on the one hand, and subtle practical artifices on the other. The difficulty of maintaining a steady balance between these equally dangerous extremes can only be appreciated by one who has had the opportunity of actual observation.

**Eminent Domain.**

A fifth topic, emphasized in the Inaugural, was that of *eminent domain,* which involved the power of the State to take private property for public use upon compensation to the property owner. While explaining that the Constitutions of both the United States and the State protected the citizen in his individual right of property, he admitted the qualification that where there was public need, for the good of the community, the State might intervene, and upon compensation, compel him to surrender his individual right for the general welfare. "The danger as well as the vice of the situation lies in the unrestrained power of a few individuals, bound together under the mysterious potencies of corporations, to seize upon private property upon a mere declaration of their covetousness, and foul streams, cut through forests, and destroy homesteads." In the Governor's view, before any franchise was granted, either by special or general law, involving a disturbance of the individual right of property, and before any exercise of the enormous power of eminent domain by a private or public corporation, there ought to be express assent by the State itself, based upon an ascertainment of the public need.

In this he announced the wholesome principle that, "while the test was public necessity to which a citizen must yield, the determination of the existence of such a necessity should not be left to the *ex parte* choice of a corporation interested in the acquisition, but should be lodged in an independent and impartial officer or official body to pass on the question in advance of condemnation." I call your attention to this as one of the best illustrations of the Governor's fairmindedness and perfect poise. What he said seems to have been regarded as a challenge, for very shortly two bills reached him, both of which he vetoed. One of them conferred upon cities the right of eminent domain to remove dams, booms and other obstructions from streams flowing near cities. "This bill," said he, "if it became a law, would grant to the cities a most dangerous power. The power is given to remove not an obstruction within the limits of the municipality, but an obstruction upon any stream of water which flows near the corporate limits. With the city authorities rests the power to determine whether the obstruction impedes the natural flow of the stream. The foundations of a bridge may be an obstruction and a dam certainly would constitute an obstruction. Under this bill, therefore, since the Delaware river flows near the City of Philadelphia, that city would be permitted to remove any dams which may exist upon the river. The Susquehanna river flows near the City of Harrisburg. Under this bill that city would be permitted to remove all railroad bridges which cross the river." The other bill gave to railroads the power to condemn dwelling houses "for yards and shops," or for "any other proper corporate purpose," whenever "in the judgment of the directors" it was necessary to construct, straighten, widen or improve the railroad. The Governor said: "When the land of a citizen is taken by a railroad, it is taken by the Commonwealth, because the

public necessities require the sacrifice. Is it then more to the interest of the Commonwealth that there should be an absolutely straight line between New York or Chicago, because that is the logical end toward which one alternative takes us, or is it more to the interest of the Commonwealth that the citizen should be permitted to rear his family at his own fireside undisturbed, with all that this means for the preservation of the race and its virtues? It seems to me that it is possible to take a middle course to avoid both Scylla and Charybdis and to this extent at least to put the exercise of the right of eminent domain where in principle it belongs. There may be a house about which there can be no sentiment and little value owned by a man without family, which he proposes to sell at an enormous price because it stands in the line of a great public improvement. There may be a home typical of all that there is good in American life, around which cluster the associations of centuries and which ought to be preserved regardless of trade. There may be a railroad organized at a venture without public need, destined to end in failure after the destruction of much which is more useful than itself. Is it wise to leave the determination of what ought to be saved and what may be destroyed to a board of interested directors? Is it wise to have judgment rendered by one of the parties? The bill ought to have provided for a tribunal representing the State which could decide upon the necessity and, while being just to the railroads, could protect the citizen. If we are to go further with the grants of the right to take private property, and any one who has kept pace with recently projected legislation can see whither we are else drifting, some such plan ought to be adopted."

The same view is expressed in his veto of a bill relating to cemeteries. He declared: "It has become a frequent device, when one man wants to get possession

of the property which belongs to another, to organize a corporation, and persuade the Commonwealth to surrender to this corporation a power which ought never to be exercised except for the purposes of the Commonwealth itself, looking to the good of the people. This bill proposes to give to another class of corporations the right of eminent domain. . . . . If incorporated cemetery associations should desire to extend their lands, there seems to be no good reason why they should not buy them and pay for them, as all individuals conducting business interests are compelled to do."

State Constabulary.

The next subject discussed in the Inaugural concerned the *conflicts between concentrated capital and organized labor,* which had been of frequent occurrence in Pennsylvania, resulting in cessation of production, loss of profits and of wages, violations of law and disturbance of large communities. The Governor with his usual impartiality stated both sides of the controversy:—that "it was to the good of the State to encourage production under proper safeguards against violence and terror, for nothing but harm could result from unused resources in the hands of either individuals or corporations. On the other hand, the State was interested in bringing about conditions in which in the distribution of rewards from business ventures capital should have less of profit and labor more of compensation. But no capitalist should be strong enough, and no laborer should be insignificant enough to escape obedience to the law. No employer and no laborer should be encouraged to violate his contract, and above all no man should be permitted to interfere upon any pretence whatever with another who might choose to sell his labor, and violence, from whatever source arising, should be promptly and rigidly suppressed, using whatever force might be necessary for the purpose." The results of these just reflections were embodied in

the Act of 2nd of May, 1905, which established the now celebrated and much admired State constabulary. I shall never forget the morning when the Deputy Secretary of the Commonwealth laid upon the Governor's table an armful of commissions and asked for his signature. "What are these, sir?" "Commissions." "Commissions for what?" "For Coal and Iron police." "Pray what are they?" "Special officers to maintain law and order about the properties of coal and iron mines and other industrial establishments." "Are the names filled in?" "Yes, Governor." "Who suggested the names?" "The companies themselves." "Take them away! I will never put the police powers of the State in the hands of the nominees of one of the parties to a controversy. We must have an independent constabulary." No finer example of practical wisdom in the maintenance of law and order, without taking sides in a controversy, can be found in any State, and the results as attested by eleven years of experience have justified the Governor's sagacity.

Conservation.

Then came the important matter of the *Conservation of Natural Resources,* suggested and enforced years before it had attracted the attention of Congress or of other States, or had aroused the sleeping faculties of the Nation. "The commercial idea put briefly and in gross," said the Governor, "is that forests, coal, oil and iron are to be sent into the market as soon and as rapidly as possible, in order that they may be converted into money and the man of the day may live in luxury and enjoyment. The duty of the statesman is to look beyond the indulgence of the time, to regard these resources as gifts of Providence, to be husbanded with care and used as need requires rather than wasted or poured upon glutted markets, with a sense that when once exhausted they can never be restored." The Governor's suggestion that a slight tax should be imposed upon some of our productions, the proceeds to

be applied to the betterment of our roads, which he argued would not be a serious burden, but would result in securing for our own people a proportion of the benefit of the natural deposits, was not acted on, but the establishment of good roads was embodied in the Good Roads bill of 15th of April, 1903, and the creation of the State Highway Department. The acquisition of large bodies of lands to be reforested,—a policy which had been inaugurated by Governor Stone,—was promoted by the Act of 13th May, 1903, which directed the Commissioner of Forestry to establish a school at the Mont Alto Reservation for practical instruction in forestry and to prepare forest wardens for the proper care of the State lands.

Historic Shrines.

The next topic dwelt upon in the Inaugural lay very close to the Governor's heart and his illustrations displayed his characteristic touches as a historian. "No people," he said, "are ever really great who are neglectful of their shrines and have no pride in their achievements. The history of the world shows that a correct sentiment is a more lasting and potent force than either accumulated money or concentrated authority. The theses which Luther nailed to the church door at Wittenberg still sway the minds of men and the Fuggers disappeared when they died. What would have been the influence of Greece without the memories of Marathon, or of England without those of Runnymede? Around Fort Duquesne, in Western Pennsylvania, at one head of the great river of the world was to a large extent determined in the French and Indian War the question whether the American continent should be dominated by Latin or Teuton, involving the destinies of the human race, and around Philadelphia, in Eastern Pennsylvania, the real struggle of the Revolutionary War occurred. The good example set by Philadelphia in its care of Independence Hall and Congress Hall should be followed by the State. The fields

of Fort Necessity, where Washington first became known; of Bushy Run, where Bouquet won his important victory, and the camp ground of Valley Forge should be tenderly cared for and preserved." He had the satisfaction of seeing the Valley Forge Commission well established and generously supported. Later he successfully headed off a movement in Congress to take the control away from Pennsylvania and lodge it in a National Commission. He did so in a characteristic letter to Senator Penrose, which proved effective: "Our State Commission has secured the lines there (Valley Forge), has laid out avenues and is doing its work well. We want to do everything we can to help them and to prevent the interference which comes from persons outside the State and certain well-meaning but ill-advised women within it. Pennsylvania is rich enough and capable enough to take care of Independence Hall, Valley Forge, and her battlefields, and make them tell their lesson to the nation. After she had expended large sums of money in marking and erecting monuments at Gettysburg, it was transferred to the United States Government and the result was that after Grover Cleveland had been elected President the bronze New York monument was put in the cemetery in the very center of the field, which was in every aspect of it a Pennsylvania battle. I do not propose, if I can help it, to have this course repeated as to Valley Forge, and should the matter come up in Congress, I rely upon you to help me. Should a bill be presented, you can probably kill it easily by having added to it that the Government also take Bunker Hill from Massachusetts and Stony Point from New York."

**University of Pennsylvania.**

The Inaugural next dealt with the unique relation occupied by the University of Pennsylvania to the State. As early as April 1891, the Governor, in an elaborate article contributed to the PENNSYLVANIA MAGAZINE OF HISTORY AND BIOGRAPHY, had examined in

detail and traced with care the history of the University in its relation to the State, emphasizing the statutory obligations created by the Legislature in obedience to the mandate of the Constitution of 1776 that "all useful learning shall be duly encouraged and promoted in one or more universities." He had followed this in 1899 by a minute and convincing presentation of facts to a special committee of the Trustees to inquire into the origin of the University of Pennsylvania in support of a demonstrable origin in the charitable school established in 1740, subsequently expanded into an academy, a college, a university, without losing its original feature as a part of the general scheme. With this matter in view, he declared: "It shall be my effort to restore the relation of patronage and control, the outgrowth of colonial conditions and made a constitutional requirement, and to regain and retain for the State the credit of this early and unprecedented recognition of the cause of learning." In pursuance of this purpose he not only attended frequently the meetings of the Trustees, but revived the old custom of having the Board meet once a year in the State Capitol, when he presided *ex officio*.

The next topic dwelt upon in the Inaugural, the statutory regulation of the public press, I shall reserve for special consideration.

**State Enterprise.**

He then dwelt upon the importance of a real State pride; the elimination of separate interests of city and country; the need of Pittsburgh to aid Philadelphia in finding an outlet to the sea, and of Philadelphia to aid Pittsburgh in her effort to unite the vast population of the head waters of the Ohio, and entreated both to act not for themselves alone, but for the good of the State and its people. He had the satisfaction of seeing both of these purposes generously nurtured by liberal legislative appropriations for the enlargement and improvement of the navigation of the Delaware and Allegheny rivers.

Summary of Results.

From the foregoing review of the Governor's elaborate and well-considered programme you will perceive that he succeeded in all his aims, save the one that I have reserved, and even as to this he achieved a partial but lasting success. He had reduced the bulk of legislation; he had curbed the invention of new crimes; he had reapportioned the State; he had reformed the ballot laws; he had safeguarded the purity of elections; he had restricted the power of eminent domain; he had established an impartial police force; he had conserved the natural resources of the State; he had improved her public roads; he had honored her historic shrines; he had reconsecrated her greatest educational institution; he had awakened State pride and State coöperation by fostering commerce upon the greatest of our natural highways. Add to these the achievements of the special session of 1906—the honor of which belongs to him alone—the creation of a Greater Pittsburgh; the protection of the State funds deposited in banks and trust companies; the personal registration of voters; the Act against corrupt practices at elections; the prohibition of officers, clerks, and employees of cities of the first class from taking an active part in political movements and elections; the control of State appropriations for the erection of County bridges; the abolition of fees in the offices of the Secretary of the Commonwealth and the Insurance Commission; the improvement of primary election laws; the establishment of a civil service system; the regulation of nomination and election expenses, and requiring that full accounts to be publicly filed. Here you have a body of constructive legislation of lasting value unparalleled by any corresponding period of four years since the days of Franklin. I challenge controversy on this point. President Roosevelt declared, in speaking of the results of the special session only, that no such complete results of reformatory and progressive legisla-

tion in so short a period of time had been attained in any other State of the Union. Had he known of what else had been done he could scarcely have been more emphatic. The *Yale Review* devoted a whole article to the record of the special session, and declared that through the Governor's vigorous action "in a single month there had been placed on the statute books of Pennsylvania a most remarkable set of laws." Even the great daily journals, which had been the most exacting, the most persistent and relentless of his critics, were emphatic in his praise.

But besides these achievements of the highest order, there is a second class to which I must call your attention. He established the following Departments: Public Printing and Binding; State Highways; State Fisheries; Factory Inspection; the State Police. He established also the Bureau of Mines; of Vital Statistics; of Economic Zoölogy; and a State Museum of objects illustrating the fauna and flora of the State, and its mineralogy, geology, archeology, arts and history, the latter securing for the first time an orderly arrangement of the records of the State. He regulated the hours of labor and the employment of minors in the industries and manufactories of the State. He provided for the erection of a State Hospital for the treatment and care of the criminal insane, which has became one of the model institutions of the country. He provided a system of humane education in our public schools, forbidding experiments in such schools upon any living creature. He authorized and appointed a Commission to codify the laws of divorce and to co-operate with the other States in securing uniformity of divorce legislation in the United States. By increasing the salaries of the judges he gave them an adequate income so essential to good judicial work. He signed a well drawn and practicable Pure Food Act and avoided the mischief of baking-powder bills. He revised the tax-

ing systems of the counties of less than one million inhabitants, and by the creation of the Water Supply Commission he rescued the streams and springs of the State from speculative or monopolistic appropriation.

It would be easy to multiply illustrations of his statesmanship, breadth of view, rational progressiveness, care of the public health and morals, conservation of natural resources, of his pride in the State's history, and his eagerness to promote her welfare, but these must suffice as illustrations of his acts as a constituent part of the legislature, through his power to approve or veto bills. It is now in order to consider him as an administrator.

**Administrative Work.**

In this respect he was altogether admirable. But little is known by the public of the exacting duties imposed upon the Governor, and it will not be out of place to describe some of their features which will stand as a fair sample of his entire term, as he was expected to reside at the Capital, and devote himself continuously to the routine duties of the office. The Legislature met but once in two years, remained in session from the second week in January until the middle of May, and devoted on an average but four days a week to its labors, assembling on Monday evenings and adjourning on Thursday afternoons, so as to allow the non-resident members to attend to their private business at week ends. As against an eight months' legislative service, the Governor, who even in the summer months enjoyed but slight relaxation, toiled more than five times as long. While the Legislature was in session his official routine was much interrupted by the calls of Senators and Representatives to discuss pending bills whose name was legion, and by the visits of strangers attracted by a meeting of the Legislature, and particularly by swarms of citizens from all parts of the State interested in educational and charitable appropriations for universities, colleges, schools, hospitals

and asylums, and markedly suspicious of everybody's avarice except their own. They were followed by flights of office seekers and their backers, looking for judgeships, clerkships, prison appointments, justiceships of the peace because of vacancies, membership on State boards or commissions, or requesting letters of recommendation to corporation officers, based on some slight campaign acquaintance with the Governor or from having served as a juror in his court, or from having known him when a schoolboy. The Governor, however busy, having been elected by the people was "a public servant," and had, therefore, to postpone the reading of his mail, which was choked with similar requests, and reserve for a quieter hour the consideration of approval or veto of the bills, which were being weekly certified to his table by the presiding officer of the Senate and the Speaker of the House as having been passed by both those bodies. When the Legislature adjourned, for thirty days thereafter the strain was still greater, for it was found that in the closing days five hundred bills or more had been hurriedly passed, and that the Governor must examine all these within the time limit lest they become laws, and further that the appropriations exceeded the revenues by millions of dollars, thus imposing on the Executive the odious and unjust task of paring them down, or of vetoing them outright, provoking very often a howl of rage. "If he had only let our bill go through," shrieked citizen A., who was deaf to similar shouts from the majority of the alphabet.

Hard though the task was, he accomplished it. Being in the best of health and spirits, punctual, attentive, diligent and capable, accustomed to hard work, and ready with his tongue and pen, he disposed of duties that were new to him with noticeable ease. At times his humor, at times his philosophy aided him. A bill had been passed prohibiting the killing of bears, ex- Humor.

cept in the month of November, and with any other weapon than a gun. The original form in which he dictated his veto message was as follows: "I would gladly sign a bill properly drawn for the protection of this interesting animal, but unfortunately this Act compels a judge to send a man to jail who kills a bear in any other month of the year than November, and with any other weapon than a gun. Suppose a man with an axe in his hand, and chopping wood in the month of July, is attacked by a bear with cubs, the bear won't wait till November, and won't let him go get a gun." I begged him to allow it to remain in that form, but he thought it too crude for a veto message, and whipped it into the shape in which it finally appeared. The humor is still there but the point is blunted. A railroad bill authorized one railroad company to purchase a part or parts of another railroad company's property. He said: "I do not know what is meant by 'a part or parts.' There was once a man who was cut into pieces. One piece consisted of a fragment of his finger nail, the other piece of the remainder of his body." Of his philosophy I will give but two illustrations. A State officer had refused to perform a ministerial duty under a mandatory statute. The duty was so plain that I prepared to apply for a mandamus. Before doing so, I had a talk with the Governor, and after reading the statute declared: "I do not see why he cannot see his duty, the law is specific." Looking out of the window the Governor asked: "Carson, can you see those hills on the other side of the Susquehanna?" "Certainly," I replied, "but what has that to do with the case?' "You can see them, you say? I slept on those hills three nights before the battle of Gettysburg." He then gave me a graphic account of the experiences of his regiment. I was interested in the narrative, but after it was over, said: "That is very diverting, but what has it got to do with the case?"

His answer was: "You say that you can see those hills. Your eyesight is perfect, but suppose I asked the same question of Mr. D.?" (naming a spectacled clerk in the office). "His answer would be 'No, Governor, I cannot see the hills.' I would not be disturbed, because the poor fellow is near-sighted." And then bursting into laughter, he said: "Your man is *intellectually near-sighted;* pity him, but mandamus him."

On another occasion, after three hours of continuous labor in silence, the Governor dropped his pen and asked me if I knew who Cornelius Plockhoy was. Fortunately I had read The Settlement of Germantown and replied in the affirmative. He then discoursed on Plockhoy's socialistic views, and at the end of ten minutes resumed his interrupted work with the remark: "I do not smoke tobacco, but I do enjoy a little intellectual smoke."

Charters.

A striking example of the Governor's care in the transaction of the public business was presented by his practice of personally scrutinizing all applications for charters for business corporations. On the second day of his term, observing that the form of charter in use gave no information as to the capital subscribed, or the names of the stockholders, he called for the original papers on file in the office of the Secretary of the Commonwealth. His quick eye soon discovered several instances where the authorized capital was but $1000. He instantly suspended action, and refused in writing to approve the charter of the Donora Light, Heat and Power Co., using that as a test case, stating: "It is manifest that the cash which has been paid into the treasury and the whole amount of the capital stock, if all of it had been paid, would be entirely inadequate for the purposes of the corporation. A charter ought not to be granted where it is manifest that the corporation would not be able to perform its functions." (27 Penna. County Court Reports, 463.) Alarm spread

from the Secretary's office to all parts of the State. The Governor's refusal, it was declared, would destroy the business of the Commonwealth, curtail the revenues, and drive all applicants into other States, New Jersey and Delaware in particular, and breed a plague of foreign corporations seeking to do business in Pennsylvania. Protests from corporation lawyers, eminent in the profession, flowed in daily. A day was set for solemn argument upon an application for a rehearing. The leaders of the bar in Dauphin County, sustained by colleagues from Philadelphia, Pittsburgh, Scranton, Reading and Lancaster, appeared in opposition and a discussion, as in a court room, followed, lasting for nearly three hours. In less than a week, the Governor handed down a carefully written opinion (12 Pa. Dist. Rep., p. 115). He explained that, unless the practice were changed, "any three irresponsible persons may secure the grant of most important privileges without the necessity of advancing money to assure the carrying out of the purpose of the corporation," and the charter if granted would constitute a contract, the obligation of which the State could not impair. Men of straw could easily be used for the purpose. "Traffic in charters would be thus encouraged." "Approval" by the Governor meant something more than a mere clerical function. It meant that he must be satisfied that a substantial capital had been subscribed by responsible persons to insure good faith. With the possible consequences of his refusal to accept a nominal sum he had nothing to do. It was his duty to see that the charter was based on actual value. He reaffirmed his previous ruling and established the position that at least five times the amount previously required would be exacted in the future. In less than a year he had quintupled the revenues of the State from this single source, and instead of driving charters elsewhere there was an enormous increase in the number of applications, be-

cause it was recognized that a Pennsylvania charter was not to be bought for a song, or made the cover for speculative schemes.

Pardons.

In the matter of pardons he exercised the same circumspection. Although, under the law, he could not extend executive clemency except upon a favorable recommendation of the Board of Pardons, he sometimes refused to concur in their action. Notably, in the famous Cutaire case, which presented the dramatic features of that of Eugene Aram—the discovery of human bones sixteen years after the mysterious disappearance of a living person—he wrote an opinion refusing to liberate the prisoner whose death sentence had been commuted years before to life imprisonment: and in the Kate Edwards case, which had been heard three times by the Board of Pardons, and which led to an Act of Assembly at the instance of Chief Justice Mitchell, he withheld the death warrant, because he declared he could not hang a woman years after her male confederate had been acquitted, the evidence showing that either both were guilty or both were innocent. In this connection, it may be said that although the Governor was personally strongly opposed to capital punishment, he never hesitated to sign death warrants when required by law. It cost him, however, much mental anguish, which was noticeable for hours.

Judges.

In the same cautious way he handled all requisitions for the extradition of criminals, in doubtful cases sending the papers to the Attorney-General.

In the selection of judges for vacancies to be filled by Gubernatorial appointment he deliberated long. Admonished of the danger of haste, through the declination of the appointee, the selection of George Tucker Bispham, before actual tender of the place, having obtained publicity through an accident, he pondered even when a particular appointment was strenuously pressed. I recall that a certain eminent lawyer

was unanimously supported by the citizens and interests of his county in the upper part of the State. The unanimity of the support made the Governor cautious, and he made some independent inquiries of his own. He learned that the candidate was interested financially and officially in all the public utilities of his neighborhood. "How can I appoint him?" he asked; "he would be disqualified to sit as a judge in perhaps the most important litigation of his county." He selected another man of merit, and three weeks later it was bruited about that the local bank, the electric light company and the trolley company had all failed and carried down in the crash the very man who had been so persistently urged.

In the *Yale Review* of August, 1907, Mr. Clinton Rogers Woodruff, an accomplished student of State affairs, wrote: "Governor Pennypacker himself set the example of careful, conscientious, faithful discharge of the executive duties of his office. He was at his desk in the executive building every morning at 9 o'clock on practically every working day of the year. He remained throughout the day, accessible to all who had business to transact with him, and carefully considered every subject presented to him. As an illustration of how he conducted the executive work, I may cite an instance which I personally observed. I was in his office on one occasion by appointment. The Auditor-General preceded me by a few minutes, his business relating to the execution of a contract. The Governor asked in the first place for the Act of Assembly authorizing the work covered by the contract. He examined that carefully to make sure that he had the authority to execute the contract. Then he examined the contract itself to see whether it was in conformity with the law and adequately protected the interests of the State. Then he asked for a certificate from the State Treasurer to make sure that the money involved was in the

Treasury and available. After he had satisfied himself on all these points and that the contract was in legal form, he attached his signature. He took nothing for granted and acted only after he was fully informed as to the circumstances."

In Camp.

As Commander-in-Chief of the Army and Navy of the State he was an annual visitor to the camps of the National Guard, and became deeply interested in the inspection of arms, uniforms and equipment. I am indebted to Adjutant-General Stewart for the following anecdotes. At his first camp the Governor inquired with some anxiety as to whether it was usual to review the troops on horseback, and on being told that it was, after a few minutes of hesitation, said: "General Stewart, as I have been so long unaccustomed to the saddle, and have many responsibilities upon me I shall not mount. It is too great a risk." The reply was, "Then the staff must dismount." "Be it so," said the Governor, "if I can walk, they can do so also." The inspection then proceeded, the Governor following closely with his eyes the examination of arms and accoutrements as conducted by Inspector-General Sweeney, who, in passing rapidly down the lines, halted in front of a private and called his attention to the fact that his bayonet was not properly adjusted, but was turned the wrong way. The Governor after watching the method of correction took the weapon into his own hands and adjusted it to the musket several times and passed on. The next year a General of the Regular Army of the United States conducted the inspection, and overlooked a misplaced bayonet. The Governor waited until the line had been passed and then said, "General, I think that you have passed a man with a misplaced bayonet." "Impossible," was the reply; "a bayonet cannot be misplaced." The Governor smiled, and returning to the man took his weapon from him and brought it to the General, and made a demonstra-

tion. A hearty laugh followed at the expense of the regular army officer, who said: "Well, I am a graduate of West Point, and I never knew before that a bayonet could get out of its proper groove."

At the inauguration of President Roosevelt a portion of the National Guard of Pennsylvania attended under the command of Governor Pennypacker, who asked General Stewart to provide him with a horse. In view of his previous unwillingness to mount, the General expressed surprise and intimated that it was probably more dangerous to ride a strange horse through crowded streets with excited citizens waving flags and hats than on a decorously conducted parade ground. The Governor's reply was characteristic: "General Stewart, in Pennsylvania I was Commander-in-Chief and could do as I pleased; here in Washington on an occasion like this I am under orders as a Division Commander. I have looked at the orders and they require that all officers shall be mounted. I shall not set an example of disobedience, and I shall not withdraw from my command. See that I have a horse." While riding down Pennsylvania Avenue, an old man on the sidewalk exclaimed: "Here comes the Governor of Pennsylvania, I wonder if he has his ancestral boots!" "There they are," said the Governor, thrusting out his foot and drawing up his trouser leg, and laughing heartily.

Governor's Duties.

To give you correct information as to the multiplicity of duties exacted of Governor Pennypacker let me say that in addition to those which I have described, which may be called his major duties, he was also President of the State Board of Agriculture, a Trustee of the State Library, a Commissioner of Public Grounds and Buildings, the President of the Commission of Soldiers' Orphan Schools, of the College and University Council, of the State Live Stock Sanitary Board, of the Board to Pass upon the Necessity for

the Construction of Elevated and Underground Passenger Railways; of the Louisiana Purchase Exposition Commission; of the Commission for the Erection of a Statue of Governor Curtin at Bellefonte; of the Commission for the erection of a Soldiers' Monument at Middle Spring; of the Commission to purchase a silver service for the Battleship Pennsylvania, and a Trustee of Allegheny College and of the Soldiers' and Sailors' Home at Erie. He was also *ex officio* a visitor to the Philadelphia City and County prisons, of the penitentiaries of the State, and of the several lunatic hospitals, and the soldiers' orphan schools. He signed all patents for lands issued in the name and by the authority of the State. He had power to remit fines and forfeitures, to grant reprieves and commutations of sentence. He demanded fugitives from justice from the Executive of any other State or territory, and issued warrants for the arrest of persons resident in this State upon the requisition of the Governor of any other State or territory. He authenticated under the seal of the State records and instruments of writing intended for use in other States or territories. These constituted his minor duties, but occupied much of his time and attention, as none of them, not even excepting his visitorial rights over public institutions, were ever neglected.

Simplicity of Life.

In his mode of life at Harrisburg the Governor was simple and unaffected. His public receptions, while hospitable, were modest and inexpensive. There was an entire absence of display. His annual dinners to the members of the State judiciary resembled the cordial gatherings of friends for talk and reasonable relaxation rather than formal affairs. His biennial receptions of the Senators and members of the House were popularly attended by tradesmen and farmers and modest citizens of the neighborhood, as well as by Statesmen, Congressmen, and local magnates. He

drove no carriages at State expense as he and his family preferred to go about on foot. If he was in haste to catch a train he used a depot hack. He paid his own railway fares and never accepted a pass, at a time when passes were common. He maintained no press staff, and though friendly with reporters, with whom he was personally popular, he never entertained them until the last fortnight of his administration. He never directly or indirectly sought to curry favor or moderate criticism. He took pleasure in feeding the squirrels on the Capitol grounds, and always had his pockets filled with nuts for their use. He superintended the pruning of the trees and shrubs on the Capitol Hill and delighted in long tramps up the banks of the Susquehanna, or in excursions to Wetzell's swamp in search of flowers and insects, or to the river islands to pick up Indian arrow heads or stone implements. He liked to talk to fishermen in shad season and enjoyed simple suppers at road-side inns. The loungers about the doorways never knew to whom they were listening, unless some one recognized him and called him "Governor." He was in high spirit when visiting the forestry reservations or the fish hatcheries, and told ghost stories in the moonlight to the wondering foresters. He publicly thanked by letter the newspaper which had aided him by a useful suggestion and never was heard to utter an opprobrious epithet even when sorely tried. He was considerate and kindly to the clerks and messengers in all the Departments, and won their hearts by his simplicity and manliness.

**Avoidance of Strike by Proclamation.**

In the spring of 1906 the clouds of an impending strike gathered in the anthracite region, threatening a repetition of the devastation, loss and gloom so frequently resulting from violence and rioting. Without waiting for armies of strikers to march out of the mines, and gather as pickets to intimidate others in the neigh-

borhood of the breakers, and without waiting for the ripening of the crisis requiring the presence of the State Constabulary or the calling out of the National Guard, the Governor by a bold and resolute stroke, which was entirely original, maintained unbroken peace and good order. He issued the following proclamation on May 2d, 1906: "Whereas, industrial disturbances have recently arisen in various parts of the Commonwealth accompanied by manifestations of violence and disorder; Now therefore I, Samuel Whitaker Pennypacker Governor of Pennsylvania do issue this my proclamation and call upon all citizens by their conduct, example and utterances, whether printed or verbal, to assist in the maintenance of the law. Times of commotion furnish the test of the capacity of the people for self government. Every man is entitled to labor and get for his labor the highest compensation he can lawfully secure. There is no law to compel him to labor unless he so chooses and he may cease to labor whenever he considers it to be to his interest so to cease. The laboring man out of whose efforts wealth arises has the sympathy of all disinterested people in his lawful struggles to secure a larger proportion of the profit which results from his labor. What he earns belongs to him and if he invests his earnings the law protects his property, just as the rights of property of all men must be protected. He has no right to interfere with another man who may want to labor. Violence has no place among us and will not be tolerated. Let all men in quietness and soberness keep the peace and attend to their affairs, with the knowledge that it is the purpose of the Commonwealth to see that the principles herein outlined are enforced."

No higher encomium could be pronounced upon the result accomplished by this quiet but determined attitude than that contained in the following letter:

"Reading Terminal.
Philadelphia, Penna.
May 10th, 1906.

My dear Governor Pennypacker:

When I was pressed by the New York interests to urge the Governor of Pennsylvania to take a decided stand for law and order I told them that I knew the Governor of Pennsylvania; that he would perform his duty without suggestions from any one; that no person in the Commonwealth better understood what was his duty; and that he had the character and the courage to perform it. I have received a number of telegrams congratulating the Commonwealth on the stand taken by you; and I only want to say to you now that your action was a most potential factor in bringing about a solution of the problem.

Yours very truly,
Geo. F. Baer."

With this solid background of character and achievement before us we can view in proper perspective the stormy features of his career. His critics and opponents were of two classes, those who misjudged him, and those who fought him from "policy." I seriously doubt whether he had any real enemies, certainly no personally malignant foes. His friends who understood him were staunch and loyal, and were bound to him by "hooks of steel."

**Quayism.**

The first murmurs of discontent came from those who disliked his admiration of Senator Quay. They asserted that Quayism had spoiled him. There were some people to whom the mere mention of Quay's name caused a spasm affecting the vision, just as the shadow of King Richard in the bush caused the horse of the Saracen to shy. They never were able to discriminate between personal opinions and official acts. It is true that Mr. Pennypacker personally liked Senator Quay,

and that he sincerely admired his political leadership and its results. But this is a totally different thing from approval of Quay's system or an adoption of his methods, both of which were absolutely foreign to his nature, and wholly unknown to him in practice. His wrath had been greatly stirred by an anonymous attack on Pennsylvania in the *Atlantic Monthly* of October, 1901, as it was evident from the time of its appearance, being coincident with an approaching election, and from its use of local incidents that it was a covert political document intended for use in Pennsylvania by an unknown Pennsylvanian who attempted to belittle the really great features in Pennsylvania history. Judge Pennypacker's reply was crushing and convincing, and would have stirred every heart, if he had not added a eulogy of Mr. Quay. He did not use the expression that "Quay was greater than Webster." That was a phrase devised by a critic, and its brevity and point gave it a meretricious circulation. What he did was to draw a parallel between Webster's surrender to the Slave power, evoking the designation of "Ichabod" given him by Whittier, and Quay's success in electing Harrison as President, the defeat of the Force bill, and the success of the McKinley Tariff bill. If any one will read the address upon Mr. Quay delivered by the Governor on the occasion of the memorial services, March 22d, 1905, and read it wittingly, he will find that the marrow of the eulogy is expressed in this sentence: "In the capacity for the building up and the maintenance of political forces and for their application to the accomplishment of public ends, it may well be doubted whether the country ever before produced the equal of Mr. Quay." And the candid reader will find toward the close of the eulogy this sentence also: "He was not without faults. If his conduct sometimes fell below the highest ethical standards, where is the man who can honestly scan his own life and throw a

stone? Though he cared nothing for the mere accumulation of money, and was little 'afflicted with the mania for owning things,' he exulted in the exercise of power and like the war horse in Job smelled 'the battle afar off, the thunder of the captains and the shouting.' He regarded men and their aims too much as mere counters to be used for his purpose. He cared too little for their comments." Here then is the distinction. While he admired and greatly admired the man as a statesman and what he had done for Pennsylvania and the Nation at large, he did not deny, while he sought to soften, his weaknesses. But we are considering not Mr. Pennypacker's personal views but his acts and conduct as Governor, and it is only because his critics failed to notice the distinction that I am at the pains to state it. The Governor's methods and the Governor's acts were not those of "Quayism." He never bullied men; he never applied the screws of power, he never manipulated caucuses or conventions, he never maneuvered for position, he never schemed, he never coerced a legislature; he never trafficked in places; he never tempted men; he never bought them. He simply did not know what such things were. He never surrendered his judgment to Mr. Quay: he never acted under his dictation. He selected his cabinet largely on purely personal grounds. The Attorney General, the Deputy Attorney General, the State Librarian, the Commander of the State Constabulary, the head of the Health Department, and the Private Secretary were not Quay men, in fact several had been actively anti-Quay. The Superintendent of Public Education was a lifelong Democrat; the first appointment to the Supreme Court was of a lifelong Democrat; the second appointment to the Supreme Court was of the man who had led the Independent revolt in 1882. The first judicial appointment to a lower court was also of an Independent. The Secretary of the Commonwealth, who

died in office, the Banking Commissioner, the Secretary of Agriculture, and the Dairy and Food Commissioner, coming from other parts of the State where the Governor had no acquaintances politically, were, it is true, agreeable to Mr. Quay, but they all made admirable State officers, and proved to be zealous and efficient. In the choice of great State officers, the Auditor General, the State Treasurer and the Secretary of Internal Affairs, the Governor had no part, as they held constitutional offices, and were elected by the people. On fair analysis, it is clear that so far as administrative selections were concerned the Governor was remarkably free from Mr. Quay's influence.

As to the Insurance Commissionership, which was filled by Mr. Israel W. Durham, a Quay lieutenant, the Governor did not hesitate to call Mr. Durham's attention to his frequent absences from the office, which subsequently proved to be due to an incurable disease, and he directed a court contest, which was conducted by the Attorney General in person, over the fees of the office, which had become inordinately large, and after a judicial decision that under the statute the fees belonged to the Commissioner, the Governor put his heel upon the whole matter by making the abolition of the fees in this Department a subject matter of the amended call of the Special Session of the Legislature in 1906, and the evil was stamped out forever.

In Legislative matters it was equally clear from the first three months of the Governor's term, when he freely exercised the veto power, that he was a persistent foe to jobs. The only visit that Senator Quay ever made to Harrisburg during Governor Pennypacker's administration was in April, 1903, and he did so on the Governor's invitation. Five bills had passed the House, one to make it easy to consolidate water, gas and electric companies, another to license race-track gambling, another to repeal potential grants in the

Susquehanna Canal, the Kingston dam, and a filtration bill, all of which were favorites with the politicians. The Senator was plainly told that if the bills passed the Senate they would be vetoed. They were all killed in the Senate. A leading newspaper declared: "These five sensational reversals of schemes to which the Gang was committed followed directly upon a visit to Harrisburg by Senator Quay. He conferred with Governor Pennypacker for the greater part of the day, and departed with an abstracted air upon him, declaring in positive terms that he was not interested in any pending legislation save the libel bill. It may be that he was not. It may be that he made a special plea with the Governor to veto the grab bills when they reached him. Those who are sufficiently imaginative to accept these pleasant fancies may do so." A zealous and observant friend of the Governor, in calling his attention to this utterance, wrote: "I enclose you an editorial, which I consider the highest compliment I have ever seen paid to man. It is so evidently wrested, by the mere force of virtue, from an unwilling critic, that it speaks volumes." The next year there was no session of the Legislature, and during that year Mr. Quay died.

**Refusal of Supreme Court Justiceship.**

The next storm that assailed him was stirred up primarily by the conflicting ambitions of others, and secondarily by those who misjudged him and who ought to have known him better. Through the death of Chief Justice McCollum and the consequent promotion of Mr. Justice Mitchell a vacancy occurred in the Supreme Court, which was filled by the appointment by Governor Pennypacker of Samuel Gustine Thompson on November 25th, 1903. Mr. Thompson was a Democrat, but was considered best qualified to sit because of his having been previously a member of the Supreme Court under an appointment by Governor Pattison to fill a vacancy in an unexpired term. As the vacancy had to be permanently filled at the general election to take

place in November, 1904, the great parties began to consider candidates. Some of the Republican leaders who had suffered under the use of the veto axe and the senatorial defeat of their favorite measures, as just explained, conceived the idea of getting rid of the Governor by putting him into the Supreme Court, and without his knowledge or consent tentatively suggested his name for the place. A newspaper discussion followed, and opposition developed on the ground that the public service could not afford to lose him as Governor. It was the highest kind of a tribute to his value as Governor, particularly as it occurred after the tremendous uproar in the press occasioned by the libel bill, and I have taken it up out of the order of date solely because of its minor importance. All discussion proceeded without a word from the Governor until the argument took the turn of a denial of right on the part of the Governor to surrender his place for a seat in the highest tribunal in the State. As he considered this an invasion of his personal and official right to determine his own actions he asserted his right in a public letter which was widely printed in the press, explaining that John Jay had resigned the Chief Justiceship of the United States to become Governor of New York, and other Governors had been chosen during their terms of office as such to United States Senatorships, or had accepted foreign missions and all without a denial of their right to do so, without stating what he would do if the nomination were tendered him. In private he reiterated these views, and denied the right to force his hand, for he felt the delicacy of declining a nomination which had not yet been offered. Instantly it was assumed that he intended to accept, and those who ought to have known and trusted him became his critics. Leading members of his own bar, strange to say, addressed him in protest and urged him to make known his determination. This gave him much pain, but he preserved a

dignified silence in public, and only in private letters reasserted his rights without divulging what he would do. Finally in April, 1904, he was called upon by a Committee, consisting of the Hon. David H. Lane, Senator Sheppard, Senator John M. Scott and Hon. Henry F. Walton, then Speaker of the House, appointed to notify him that the Philadelphia delegation had unanimously endorsed him for the nomination for Supreme Court Justice. He quietly drew from the drawer of his desk a paper which he read in the following terms: "In view of the possibility of some such action as you have taken I have given careful consideration to the subject in a conscientious effort to reach a correct conclusion. I have examined the matter in all of its relations so far as I have been able to understand them, and I have concluded not to be a candidate and not to permit my name to be presented to the Convention. In so doing I want further to say to you that this expression of unstinted confidence coming from the people of the City which you represent and wherein my judicial work was done will ever be one of the grateful memories of my life." The paper was signed "Sam'l W. Pennypacker," and was handed on request to Speaker Walton, who has preserved it. It was printed throughout the State, and in less than four days letters poured in, two of them, I am happy to say, from gentlemen who had distrusted him. One read as follows: "My dear sir: If you meant, from the outset, to decline this nomination, I offer my sincere apology for ever having doubted you. But if you have yielded your own judgment and have made the splendid personal sacrifice of giving up for the sake of a professional ideal, an office to which you believe yourself fully entitled, there is no measure to the honor and gratitude which are due you." Another read: "I never lost faith even when those who wished you would accept the nomination, and those who wished you would not, alike concluded that you would. Personally, I

could not see how you could go wrong in such a matter." A third read: "I desire to present to you an expression of my extreme gratification and approval of your course in declining the nomination of the Supreme Judgeship; as far as I am able to discover in my daily intercourse, my opinions on this matter are shared by all intelligent non-partisan men of both parties. To my knowledge your presence and influence last session put a complete stopper on the corruption which has become such an unfortunate and prominent feature of our legislative sessions in later years; it was the presence of a thoroughly honest and capable man 'on the Hill' that brought these desirable results, and we cannot afford to lose such a man, even to get a good judge." A fourth read: "Permit me, without any intention of fulsomeness, to thank you, in the name of the common mass of unknown voters and citizens to which I belong, for the magnificent rejection of place and power, made by you yesterday." And a fifth read: "It would be difficult to express fully my estimate of the character of your act in refusing the nomination to the Supreme Court. In quality it is the same as that of Washington in resigning his Commission. I can recall no other instances of such complete and faithful devotion to a high sense of public duty in which self interest bore no part. This act alone will make your name illustrious in our annals. The people have never had and never will have a truer representative; calumny, detraction and abuse have had their day; and from this day forth the people will know you as you are, a man with the simple straightforward traits of Lincoln, with equal courage and endurance, and a fearless faith."

The Press Libel Law.

We now enter the real storm belt. The first, the most violent and the most prolonged of the veritable tempests to which the Governor was exposed grew out of his approval of the Act of 12th May, 1903, popularly

known as "The Press Muzzler." In my analysis of the Programme mapped out by the Inaugural Address I reserved this subject for special consideration, and it is now in order to consider it. The Inaugural contains these words: "The doctrine of the liberty of the press, conceived at a time when it was necessary to disclose the movements of arbitrary power, has become in recent days too often a cover for base and ignoble purposes, and, like the sanctuaries of old, a place of retreat where any wrongdoer may secure immunity from punishment. Sensational journals have arisen all over the land, the owners in concealment and the writers and purveyors undesignated, and they have thriven by propagating crime and disseminating falsehood and scandal, by promulgating dissension and anarchy, by attacks upon individuals and by assaults upon government and the agencies of the people." He declared that "they are a terror to the household, a detriment to the public service and an impediment to the courts of justice. It would be helpful and profitable to reputable journalism if they could be suppressed." He predicted that "the time is now at hand, and may have already come, when society will find means to prevent this development of vicious life, which constitutes the most conspicuous instance of existing ills." He declared: "I know of no reason why Pennsylvania, which has been foremost in so many directions in the past, should not take the lead in a needed effort to improve manners and morals by such a reform." He declared that "Our Constitution imposes responsibility for the abuse of the liberty of the press," and he made two suggestions for the consideration of the Legislature; first, "whether or not it would be well to extend to such cases the law of negligence as developed by the decisions of our courts, so that there should be liability in damages for the physical and mental suffering caused by publication made 'without reasonable care';" second, "an

inquiry as to the propriety of requiring the names and residences of the owners of newspapers to be published with each issue;" and added, "It may be that on consideration the Legislature in its wisdom will be able to devise other means which, while protecting journals of good repute, will tend to eliminate the unworthy."

These passages introduce us to the *casus belli.* Let me at the outset correct three widely prevalent but mistaken notions: first, that the Governor's attitude toward the press was inspired by personal sensitiveness over the use of cartoons; second, that the bill was in its most stringent features the work of his hands; third, that the bill contained provisions destructive of the liberty of the press. As to the first: The Governor was not a man of small and mean resentments, and would never have regarded a personal grievance as a basis for State-wide legislation, but, apart from this, it is sufficient to state that it was *after and not before* the approval of the bill that the malice, venom and ferocity of the cartoonists were set loose. Prior to that time the cartoons had been good-natured pieces of humor, such as those relating to the Governor's paternal boots, or the way in which he wore his beard, or, at the worst, his friendly relations to Senator Quay. In proof of this, all that need be done is to look at the newspapers of the campaign period preceding his election, and compare them with the terrific exaggeration of the art of the cartoonist and the satirist after the bill had been approved. As to the second, the Governor's draft of a bill contained only provisions for compensatory damages resulting from negligent publications, and the publication of the names of the owners and managing editors of the papers. It contained no reference to punitive damages resulting from the use of "pictures, cartoons, headlines, displayed type, or any other matter calculated to specially attract attention." Those features and the

punitive damage clause were injected by amendment, without consultation with the Governor, by counsel for men who had smarted under the lash. As to the third, a simple analysis of the bill, section by section, will suffice.

The Governor's main thoughts were contained in the two specific suggestions he had made as quoted above from the Inaugural Address. I recall distinctly a conversation I had with him in June, 1902, more than four months before his election, when strolling about his farm on the banks of the Perkiomen. He was speaking of his experiences as a judge. "I have tried many cases, perhaps a thousand, of injuries to citizens resulting from the negligence of others; of men and women hurt upon railroads, or knocked down in the street by careless drivers of vehicles, or from people throwing things from windows, and I have had to consider whether a little care could have prevented injury; and I have often thought as I have read of injuries to reputation or to business caused by some careless newspaper publication whether the law of negligence rather than of malice ought not to apply." He mentioned three kinds of cases which had impressed him, where a charge had been made and published of official dishonesty against the treasurer of a trust company, which proving false was promptly retracted; where a charge had been made against a worthy citizen of having committed a drunken assault in a public place on a well-known man, the citizen being at the time abroad; and a charge of infidelity against a married man, whose complete innocence was established by an alibi. "Now why," he asked, "is not this negligence? It is not malice, the editor had no malice against people he did not personally know and who were all in private life. The slightest inquiry before, instead of after, the publication would have revealed the truth, and might have prevented the shame, the disgrace and the suffering

so needlessly caused, and also the libel suits which followed." He then dwelt upon the unfairness to the injured party through lack of knowledge of the name of the author of the libel, and mentioned a fact which I did not know—that England had required by Act of Parliament the publication on the editorial page of the names of the owners and managing editors of all newspapers. He also mentioned a case of a mistrial in our United States District Court occasioned by a newspaper publication, which caused the judge to set a verdict aside. As I listened to the reading of the Inaugural I recalled these circumstances and they threw light upon his motives, although his thought as expressed went beyond them.

The Bill, amended as has been stated without his interposition, reached the Governor duly certified by the presiding officers and clerks of both the Senate and the House. As the opposition of the press was strong, a public hearing of all parties interested was fixed for April 21st, 1903, in the Hall of the House of Representatives. It was a most impressive gathering—three hundred editors, the representatives of more than twelve hundred newspapers, dailies, semi-weeklies, bi-weeklies and monthlies, were present in protest—and the large room was crowded to its utmost capacity with members of the Legislature and interested citizens as spectators. The Governor presided, and, alive to the psychology of such an unusual occasion, was heard to remark: "This meeting is morally most significant. The press is asking to be heard before a decision is reached. Perhaps it may occur to some of these worthy gentlemen that that is just what private citizens would claim as their right before being stricken down in reputation and business." The case was argued, in support of the bill, by Richard C. Dale and Alexander Simpson, Jr., both at the height of their eminence at the bar, and in opposition by the Hon. Charles Emory

Smith, editor of the Philadelphia *Press,* Hon. Thomas V. Cooper, a member of the House, but appearing as the editor of the *Delaware County American,* and by Cyrus G. Derr, Esq., a leader of the Reading bar and the present president of the Pennsylvania State Bar Association. In a discussion between these accomplished disputants, lasting nearly four hours, every phase of the question was presented. The public, however, was not so well informed. The text of the bill was never printed in the newspapers, so that there was never an opportunity given to citizens to judge for themselves of the character of the proposed legislation. The arguments against the bill were printed in full; the arguments in its favor were stated in a form so abridged as to give little idea of their pertinency, particularly as the text of what was being discussed was suppressed. The bill itself was denounced editorially and a campaign worked up against it, in which some incautious and emotional members of the reverend clergy participated without ever having read a line of the measure. Thus was it made easy—whether intentionally or not matters little—for the public to misjudge the character of the law, and further, for the public to misjudge the Governor in approving it. In his carefully considered approval the Governor writes: "Few persons have read or have had the opportunity of reading the provisions of this bill. In order that the opportunity may be given, I quote the language in full as follows." The exact text was then stated as a part of the message of approval. Instead of printing this as a part of the document, every newspaper omitted the words of the bill, and opened their concentrated assaults by stating, "The Governor, after quoting the text of the bill, said," &c., &c. There was no way in which the citizen of that day could accurately inform himself as to the controversy, unless he happened to find legislative copies scattered

over the desks of members, a chance not within the reach of one man in every hundred thousand, and the only way in which the citizen of to-day can inform himself is to take up the Pamphlet Laws of the session of 1903, and turn to pp. 349-359, and as this State document is practically unknown to nine men out of ten, the knowledge essential to a fair judgment does not exist within easy popular reach. Hence an analysis of the bill is plainly in order. Stripped of statutory verbiage, the first section provided that civil actions might be brought against the proprietor, owner, publisher or editor of any newspaper of the State "to recover damages resulting from negligence," on the part of such persons, "in the ascertainment of facts and in making publications affecting the character, reputation or business of citizens."

There is nothing in this section which prohibited publication, any more than the liability to suit against a railroad for negligence in carrying a passenger would forbid the running of the railroad.

The second section provided that in such actions, "if it shall be shown that the publication complained of resulted from negligence on the part of such owner, proprietor, manager or editor, in the ascertainment of the fact or in the publication thereof, compensatory damages may be recovered for injuries to business and reputation resulting from such publication, as well as damages for the physical and mental suffering endured by the injured party or parties."

This too contained no prohibition of publication, but legally put upon the plaintiff the burden of proving negligence on the part of the editor, who was left at entire liberty to show that he had made inquiry or that the circumstances were such as to preclude inquiry; in short, to show as a defence that he had not been negligent.

The section then continued: "and whenever in any such action it shall be shown that the matter com-

plained of is libelous, and that such libelous matter has been given special prominence by use of pictures, cartoons, headlines, displayed type, or any other matter calculated to specially attract attention, the jury shall have the right to award punitive damages against the defendant or defendants." These are the words added to the Governor's draft, and for which he was not responsible. The split infinitive would alone acquit him, but the fact is as stated. This was the usual feature of the law of negligence, that where it was so gross as to be matter of aggravation, or where the injury was accompanied by circumstances of brutality, the jury might add punishment to compensation.

The third section provided for the publication on the editorial page of the names of the owner or editor of the paper, and provision was made for ownership by corporations or partnerships, a feature borrowed from English law, where it had been approved by experience.

The fourth section provided for notice of changes in ownership of the papers, so as to enforce the preceding section.

The fifth section declared it to be a misdemeanor, punishable by a fine of not less than five hundred dollars nor more than one thousand dollars, for a neglect to carry out the provisions of sections three and four. This was the usual sanctioning feature of a law.

These three last sections have become a permanent part of the law of the State, acquiesced in by the entire press, and stand to the credit of the Governor in furnishing protection to the citizen against anonymous or irresponsible libellers.

The sixth section repealed all acts or parts of acts inconsistent with the foregoing provisions.

There the statute ended.* It will be seen that the

* In order that the reader may judge for himself of the statute in its entirety, and of the reasons of the Governor in approval, I print the full text of the law and of the Governor's message of approval in Appendix A.

fiercest of the fighting was directed against sections one and two. The Governor in approving the bill declared: "There is nothing in the terms of the bill which prevents any newspaper from making such comments upon legislative measures or upon the official acts of the State, Municipal, County or public officers as are proper for the information of the public or are in the line of legitimate publication." That is a fair comment, and the closest scrutiny of the bill will fail to discover any muzzling of the press in dealing with public servants. The Governor continued: "There are no inhibitions in the bill. It subjects all preliminary inquiries as to facts and their subsequent publication to the test of care. The doctrines of the law of negligence are well known and apparently easy of application. Haste and recklessness in the ascertainment of facts prior to publication, or in the manner of publication, amounting in the judgment of a Court to negligence or the want of that degree of care which a man of ordinary prudence would exercise under the circumstances, will, if proved, give a ground of action for such damages as result from injuries to business and reputation. There is no interference with privileged communications."*

Let me digress a moment as to what was meant by the Governor in referring to "haste and recklessness in the

* That the reader may understand what is meant by this, I subjoin a definition from a well-known legal authority, Odgers on Slander and Libel, page 184. "'Privileged communications' are of two kinds: (1) Absolutely privileged, which are restricted to cases in which it is so much to the public interest that the defendant should speak out his mind fully and freely that all actions in respect to the words used are absolutely forbidden, even though it be alleged that they were used falsely, knowingly, and with express malice. This complete immunity obtains only where the public service or the due administration of justice requires it. . . . (2) Qualified privilege. In less important matters, where the public interest does not require such absolute immunity, the plaintiff will recover in spite of the privilege, if he can prove that the words were not used *bona fide*, but that the defendant used the privileged occasion artfully and knowingly to defame the plaintiff."

ascertainment of facts prior to publication, *or in the manner of publication.*" The following anecdote will convey very clearly the spirit and motive of the Governor's approval of the Act:

It was told to me by one of our most useful and accomplished public men whose early training as a newspaper man had made him an expert in the art of drafting headlines which constitute so large a part of reportorial skill. "There was a fishing party," said he, "of which I was one at Harvey Cedars, and the luck being against us and the weather warm we returned unexpectedly early to the piazza of the little inn where we were to dine. There were five of us, one the president of a bank, another the vice-president of a trust company, a third the superintendent of a school, the fourth the head of a manufacturing establishment, and myself. We called for refreshments, which were served on the piazza—a lemonade, a ginger ale and some whiskies and soda. The conversation turned on various matters and finally the superintendent said: 'I wonder why Governor Pennypacker signed that press-muzzling bill.' 'Yes,' exclaimed the president: 'so do I. It seems such a foolish thing for a sensible man to do.' 'I will tell you,' I replied. 'Suppose tomorrow morning there appears on the front page of one of our great dailies the pictures of all of us somewhat distorted, but plainly recognizable, with our names tagged to our clothing, with the headlines in large letters: '*Strange Doings at Harvey Cedars—A Fishing Party becomes a Drinking Bout—Mr. A., Mr. B., Mr. C., Mr. D. and Mr. E., Seen Drinking in the Open Air—Mysterious Females Hovering About.*' 'My Heavens, what a lie!' said the manufacturer. 'Is it?' I asked. 'Didn't we come down here to fish? Aren't we drinking in the open air? Didn't you see the cook and the waitress moving about to get us our dinner?' 'Yes, but it is all innocent, and the way you put it, the public

would think we were all carousing in a wrong place.' 'Yes,' I said, 'it is the way it is put, and it is just *that* against which the Governor's bill is meant to protect you.' It was an eye-opener for them," said my informant, and he laughingly added, "Do you know that I had great trouble in quieting the superintendent, who feared that I might have been overheard by some reporter, and that he would get into trouble with his scholars and his wife about the 'Mysterious Females.' "

To resume our examination of the message of approval. The Governor continued: "The bill in its application is not confined to officials, but affects as well the citizen or business man, whose conduct constitutes no part of the right of the public to information. The corporation officer who has been falsely charged with crime; the manufacturer who has been falsely accused of being a drunken brawler; the woman whose domestic griefs have been unfeelingly paraded, or whose chasity is improperly suspected; the student who has been falsely accused of murder; the clergyman who has been cruelly maligned; the quiet citizen whose peace of mind has been destroyed by the publication of evil gossip; the merchant whose credit has been affected by groundless rumors; the sufferers from reckless but not necessarily malicious publications are given the right, not to prohibit publication, but to recover the damages which they have sustained, provided they prove negligence or lack of care on the part of the publishing newspaper. All of these are instances of what has in fact recently occurred."

The foregoing extracts explaining that there was no immunity extended to public servants from legitmate criticism of their acts, and lifting the curtain upon private scenes of writhing victims of the cruelty of negligence, were dropped out of sight, and attention was concentrated upon a single sentence, in which the Gov-

ernor, after describing a cartoon as "asserting to the world that the press is above the law and greater in strength than the Government," had written, "In England a century ago the offender would have been drawn and quartered and his head stuck upon a pole without the gates." It was made to appear as if the Governor favored this form for present-day punishment of those who cartooned him. The reference to bygone times was purely historical, and might have been omitted with advantage, as open to such misconstruction, but the warlike critics of the Governor failed to notice a more aggravated instance of a misleading appeal to history on their own part when Nelan represented the Governor as chuckling over these words: " 'I thank God there are no free schools nor printing in Virginia, and I hope we shall not have them these one hundred years; for learning has brought heresy and disobedience and sects into the world, and printing hath divulged them, and libels against the best Government.' —Governor Berkeley of Virginia to King Charles II of England in 1665." This cartoon was accompanied by the headlines: "Two Governors with a single Thought. Pennypacker sees as did Sir William Berkeley the Evils of Printing. 'God keep us from it,' so wrote an old Colonial tyrant, troubled by disrespect of authority." Another cartoon represented the Governor in a proudly boastful attitude at the base of a pedestal upon which a bust appeared, on the side of which were inscribed the words: " 'I will punish this insolent printer who dares to criticize a Governor.'—Gov. Cosby of New York who prosecuted John Zenger, 1735."

No one will find in the bill, nor in the character and career of Governor Pennypacker, any justification for such misrepresentation of his sentiments or his acts. The conscientious student of the period will not fail to ponder the closing words of the Governor's approval. "Since the laws of God and nature are immutable and

inexorable, unless some means are found to uproot some of the tendencies of modern journalism confidence already badly shaken will be utterly lost, and the influence of the press, which has been so potent an agent in the development of civilization and in securing civil liberty, will be gone forever. With a serious sense that the event is of more than ordinary moment, with full knowledge of the importance of the press and of its value to mankind through all past struggles, and with the hope that the greater care and larger measure of responsibility brought about by this law, tending to elevate the meritorious and repress the unworthy, will promote its reform while benefiting the community, I approve the bill." All these words were omitted from the public prints, and the last four words quoted without their splendid and elevated setting.

It is no wonder that the people failed to understand the bill, and failed to understand the Governor. The whole Commonwealth became involved. More than twelve hundred newspapers of all kinds opened their artillery fire, and the cannonading spread until all the big guns of the Nation were in action. The cartoonists of the Baltimore *Herald,* of the Washington *Post,* of the Washington *Star,* of the Atlanta *Constitution,* of the Denver *Post,* of the Omaha *Herald,* of the St. Louis *Post Despatch,* of the St. Louis *Republic,* to name but a few of the many, depicted the Governor as muzzling a bull dog, as crunched by a tiger, as impaling an editor, as Mrs. Partington, as Don Quixote, or as worshiping a strange god called Spleen, and a political tough was seen reading a poster which read: "Pennsylvania new Libel Law Stops Free Utterance, Gags a Free Press, Stops Criticism, Throttles Justice, Suppresses Exposure of Corruption."

The future student, far removed from the passions and prejudices of that day, when he reads with calmness the text of the so-called press-muzzler, and the

Governor's message of approval, will marvel that there should have been such an uproar based on such a palpable misapprehension, and he will not fail to admire the quiet personal and moral courage of the man who faced the fire of so gigantic an engine as the press of America without flinching and without loss of character. Had the Governor been a politician, he would doubtless have retired in safety at the first mutterings of the storm; or had he been less seriously convinced of the necessity for some additional statutory regulation of the press, he would have been content to rely, as some of his legal friends advised, upon the law of libel as resting on the principles of the common law expansively expounded as they had been by a century or two of great judges. But the Governor was not a politician, and he had his own views and stood by them without quaking. No one can say that they were peculiar to himself. Many other men of widely different temperaments have had them. Andrew D. White, one of the most accomplished of our scholars and diplomatists, has lamented in his autobiography the recklessness of the American press in dealing with the characters of our public men; Theodore Roosevelt, who cannot be taunted with being a tool of tyranny or a foe to freedom, has declared that newspapers "habitually and continually, and as a matter of business, practice every form of mendacity known to man, from the suppression of the truth and the suggestion of the false to the lie direct." John A. Sleicher, editor of *Leslie's Weekly,* pleads for "a daily newspaper that shall print less and better news; that shall exercise such censorship over its columns that no one's character shall be assailed, no institution's standing be discredited, no vested right be jeopardized, and no man or woman's motives impugned until the editor has justified his statements." President Hadley urges "that the newspaper reader must get into the habit of seeing whether the statements of

fact in the paper are supported by evidence or not." And James Edward Rogers in his book upon "The American Press," just issued from the University of Chicago Press, states: "The conclusion to which my own study of the subject has led me is that the nature of the American press is essentially sensational and commercial with only a secondary place given to the cultural aspects of human thought, and that as a result its influence on the morals of the community tends in the direction of stimulating love of sensation and interest in purely material things."

There is no danger that Governor Pennypacker will be classed by posterity with Governor Berkeley or Governor Cosby, but he will be regarded as a *propugnator* for the purification and uplifting of the press.

The Ripper Bills.

The next storm that burst was local in its extent, but while it lasted it raged with violence. It grew out of the passage of four bills amending the Act of 1st of June, 1885, providing for the better government of cities of the first class, commonly known to Philadelphians as the Bullitt Bill. In the opposition press they were designated as "Ripper Bills." The name had an odious sound and an odious meaning, and the epithet was calculated to mislead. In truth, as approved by the Governor, they were not ripper bills at all. They ripped no one out of office, and they were not to go into effect until after the existing terms of the public officers to be affected had expired, in fact not until after the Governor himself was out of office. Their history was as follows: During Mayor Weaver's term, in the midst of the hottest kind of a conflict between the Mayor and Councils, he removed the Directors of Public Works and of Public Safety and appointed men of his own choice against the interests and views of the local party leaders. The municipal disturbance took place over the lease of the Gas Works to the United Gas Improvement Company. In the regular session of

the Legislature of 1905 four bills were introduced providing for the election by Councils of the Directors of Public Works, Public Safety, of Supplies, and of Public Health and Charities, and looking to their immediate effect. There was a strong effort made by politicians of all degrees to induce the Governor to sign them in this shape. It signally failed, as he was opposed to the last named feature. They were then amended so as not to become operative until April 1907. The Governor approved two of the bills and vetoed two. His critics charged that he acted inconsiderately, that he acted unwisely and inconsistently, and that he surrendered to political influences. These charges have no real basis. As to the first: Instead of acting inconsiderately he acted with deliberation. He received a representative delegation of protesting citizens, whose distinguished counsel was not only heard in argument but who filed a printed brief which was attentively read and considered. He received and heard also a counter delegation of citizens headed by another lawyer who, though a rough diamond, was an able and respected constitutional student. He wrote letters to trustworthy friends whose opinions were requested, and received replies by no means unanimous. He discussed the matter with men of the type of Senator Knox as to the various forms of municipal government best suited to varying conditions in the State. He thoughtfully pondered the decision of the Supreme Court in Commonwealth vs. Moir, 199 Pa. 534 (1901), which was marked by the ablest constitutional opinion ever written by Chief Justice Mitchell, and by the most powerful dissent of Mr. Justice Dean, so that both sides of the question were fully presented. So much for the charge of lack of consideration. As to the second charge that he acted unwisely—in the judgment of his critics—and that he acted inconsistently. He was firmly convinced —and under the law as expounded from the days of

Chief Justice Black, and George Sharswood to those of Mitchell there can be no doubt of the soundness of his views—that a municipal government was not an independent sovereignty but a mere legislative agency, entirely within the power of the Legislature to create, abolish or amend. Next, he was convinced that under the Bullitt bill the Mayor had too much power, an opinion, by the way, now entertained by many of those who once thought otherwise, and who are now agitating for a change in the Bullitt bill. Next, he was convinced that a change was desirable, and lastly that a considerable body of citizens, many of them of distinction and the highest respectability, desired a change. The personnel of the debaters did not enter into it. Had "the people," whatever that vague and shifting term may mean, exchanged sides with the politicians, his views would have remained the same. As to inconsistency, it has been said that it would have been better to have vetoed all the bills, as the result of the election of 1907 showed that the people did not want their charter touched. This is hindsight, a common form of wisdom. His conclusion was to submit the question in some shape to the people for self determination, and although the form of the bills made this somewhat awkward, by approving two bills and vetoing two, he created a referendum in accordance with the much discussed theory of the day. In this way he straddled, as some harshly said. In truth, he defined the issue so far as practicable. He gave the politicians far less than what they wanted, and he gave the people more than half of what they wanted. He displeased both sides. I do not say that it was Solomon's judgment, but it was much like Solomon's act, who by threatening to kill the child elicited the true mother's cry. He actually elicited the sentiments of the community. As philosophic Wordsworth has said,

"He is oft the wisest man
Who seems not wise at all."

Lastly, it was said that, in approving two of the bills, he surrendered to political influences. This charge is equally without foundation. By insisting that all the bills should have a prospective and not an immediate effect he cut out the ripper features from all of them. The two bills that he vetoed were those in which the politicians had the most vital interest. Had you heard, as I did, the explosions of wrath from the men who wanted a clean sweep, you would be chary of charging a political surrender. "But why not veto all the bills?" some persistent critic cries. The answer has been given in part, but there is a larger view to be considered. At the time of the discussion, it was by no means clear what the public wanted. There were too many voices, strident all of them and clashing in their clang. The politicians were not all on the one side and "the people" all on the other. The politicians' view was supported by many eminent and respectable citizens. Earnest remonstrants, however sincere, are too apt to overlook the representative features of our government. Behind the politicians stood the legally chosen representatives of the people, their constitutionally authorized agents, to express their views on subjects of government, their duly accredited attorneys in fact. To deny this is to impeach representative government. Until our system is changed government is not to be conducted by masses of men on one side, or by respectable minorities on the other. No Governor is at liberty to disregard the most characteristic and valuable feature of our system. If he were to ignore legislative acts on matters entirely within the powers of that body, it would lead to an administrative dead-lock, or else to a purely arbitrary personal autocracy. It is easy for those without actual practical experience in the administration of affairs, and who hug favorite

theories, to say that a governor ought to do this, or that he ought not to do that, but they would do well to remember the words of Sir Thomas More in his Utopia, that "there is never a time when critics are lacking ready to teach Hannibal the art of war." The man who really understands the difficulties of the task will refrain from shouting at the man at the wheel when plowing through heavy counter seas, or to change the simile, even the strongest of men when caught in the midst of swaying crowds, rushing from opposite corners, must himself choose his direction, and is not aided materially by advice from a citizen looking out of the top story window.

We are now prepared to understand the Governor's thoughtfully expressed reasons for his action.* He began by comparing a real "ripper" bill with those before him. He explained that the Act of March 7th, 1901, which applied to Pittsburgh and was not passed during his term, "abolished the office of mayor, and provided a chief executive to be called the city recorder, and to be temporarily appointed by the Governor. It removed from office the mayor who had been elected by the people. It provided for a concentration of authority in the hands of the city recorder, who was given the power to appoint the heads of five of the principal departments, as well as members of the sinking fund commission. This act became known even in the decisions of the Courts as 'a ripper.' When the constitutionality of the act was assailed, the Supreme Court decided that the power of the Legislature was unquestionable, and its exercise depended upon legislative discretion." Having thus given the basis for a comparison, he continued: "The present bills raise no constitutional query and they are in every respect the exact antithesis of this Act. They are so drawn as not to take effect until the first Monday of April, 1907, and, therefore, do

* For the full text see Appendix B.

not affect any present incumbents. They remove no official from office. They interfere with no one elected by the people. Instead of concentrating power, their effect would be to disseminate it." He then discussed the various forms of government and gave interesting historical examples of the evil of permitting too great a concentration of power in one individual. He traced the drifts of opinion, and stated that while in the National Government the tendency was toward a concentration of power, the current was running the other way in the States. Then coming to municipal affairs, he said: "The most thoughtful observers and those most familiar with the practical difficulties of the subject would probably concede that it would be better for the administration of public affairs in Philadelphia if the power, which is given by existing laws to the Mayor, could be, in certain directions, at least lessened." His views thus stated are in entire accordance with the freshest expressions of opinion, particularly those appearing recently over the signature of "Penn," whose sane, sound and always well-balanced views command the highest respect. After dwelling on several persuasive confirmations of this thought, and having declared that they indicated dissatisfaction with existing conditions, he then proceeded to answer those who urged him to reverse the determination of the Senate and House, in which all the members of both bodies from Philadelphia had participated, and with admirable self-restraint declared: "We must not lose sight of the principle that the Governor's veto was expected only to extend to those measures which might not receive a two-thirds vote of the Senate and House." This, under the circumstances of the bills having reached his table after the close of the session, gave to the Governor an absolute power of veto which was never intended. "For me to exercise this power arbitrarily with respect to the question raised by these

bills, would be to assume an unusual and illogical position. . . . . For the change of the method of government in this municipality much more than two-thirds of each House have voted. If the absolute control of affairs in Philadelphia by an individual were to be preserved, over the almost unanimous vote of the Assembly and of the representatives of Philadelphia to the contrary, by the autocratic exercise of the incidental power of the Governor, it might well be a cause both for uneasiness and complaint." Having reached a decision as to the main line of thought, he stated this qualification, that as sudden changes and radical changes were always accompanied with disadvantages, and while the power of the Mayor might be wisely lessened, it would also be wise not to take it away altogether. The way in which the bills had come to him made it difficult to discriminate exactly in the application of this cautionary view, but the conclusion reached was the most practicable. "Should further changes in the method of appointing directors prove by experience to be necessary and advantageous, they can be made at some future session."

It is submitted that the future students of our affairs will find as little to condemn in the Governor's disposition of the matters just reviewed as in the libel bill. Certainly no one will impugn his motives.

The Capitol Case.

The next storm that broke differed in its character and in its direction from those which have been described. In the controversies which raged over the libel bill and the ripper bills the attacks were concentrated upon the Governor himself; in the Capitol scandal the attacks were made upon the Auditor General and a former State Treasurer, who were charged with having conspired with the Superintendent of Public Grounds and Buildings, the architect and the contractor to defraud the State. No one ever whispered or ever intimated that the Governor was a party to the

fraud. It was known of all men that such a thing was an impossibility. Joel Hawes, an American writer of the early part of the last century, in one of his "Lectures to Young Men," forcibly said: "A good character is in all cases the fruit of personal exertion. It is not inherited from parents; it is not created by external advantages; it is no necessary appendage of birth, wealth or talents or station; but it is the result of one's own endeavors—the fruit and reward of good principles manifested in a course of virtuous and honorable action." It was Governor Pennypacker's character which made him armor-proof against suspicion and calumny. The worst that was said was that his vigilance was relaxed and that he had been stupidly blind. It is proper to examine these criticisms. Both of them are inconsiderate. No one has ever charged that the Governor did something which he ought not to have done, hence the criticisms are negative rather than positive. They do not inform us of what, in the judgment of the critics, the Governor might have done, nor do they tell us what the critics themselves would have done had they been in his place, nor do they even intimate what it was that the Governor did not see. They simply assume that there was something which he ought to have seen and could have seen had he been vigilant. Before there can be sanity of criticism there must be sanity of statement based on knowledge. Let there be no confusion of thought in the matter. The Governor was not the Auditor General, he was not the State Treasurer, he was not the Superintendent of Public Grounds and Buildings, he was not the contractor, he was not the architect. He was charged with none of their duties and possessed none of their powers. He was one of three members of the Board of Public Grounds and Buildings, and in passing the bills for the furnishing and equipment of the Capitol, he relied, and had a right to rely, on the vigilance and

honesty of his subordinates. For every dollar of expenditure, he had furnished to him with the bills the oath of the contractor, then a business man of unimpeached reputation, to their accuracy; the certificates of the architect, also under oath, to the fact that they were correct and in accordance with the contract; the certificates of the Superintendent of Public Grounds and Buildings that the goods had been delivered and were in possession of the State, and all were accompanied by the joinder of the Auditor General and State Treasurer in what were technically called "treasury settlements," and it was not until he had all of these papers involving the separate official action of four State officers that he approved the bills. He could not have found the cunningly concealed overcharges, because they were buried in a mass of thousands of items contained in the Quantities Book in the office of the Auditor General, which had been prepared and kept by that officer for his own guidance. It required the services of the New York Audit Company at a later day to ferret these items out and it involved nine months of time, so craftily had the contractor supplied goods under one schedule, which should have been supplied under another. Had the Governor put aside all his other duties and turned himself into an expert bookkeeper he could not have found the juggled items, even had he suspected them, because their detection as to overcharges depended upon tracing way-bills, packages, and the identification of articles by both measurement and scales. But at the time of approval of the bills there was no ground for suspicion; no one had made a charge, no one had sounded a note of warning, and none of the disappointed bidders, nor any of the citizens who were subsequently called to testify upon the trial, after the din had been kept up for nearly a year, were on hand with evidence. The real point is that the Governor was not required to look; it was

no more a part of his official duty to turn up such items than it would be the duty of the president of a trust company to examine each week the ledger accounts of his depositors to see whether they were properly credited or had overdrawn their accounts, or whether a clerk had made false entries to cover his embezzlements; or of the president of the Pennsylvania Railroad Company to spend his time in the auditing department, or in the supply department, or in looking after switch tenders or the men in the signal towers; or of the president of a steamship company to inspect the boilers and engines of an ocean liner so as to secure the safety of the passengers; or of a general in command of a million or two of men to discover shortages in food or munition supplies. In our complicated modern life men in the highest positions are obliged to rely on their subordinates, and on the good faith and honesty of their colaborers. It is out of reason as well as outside the bounds of practical administration to do otherwise. *Omnia præsumuntur esse rite acta* is a maxim based upon the broadest experience. In a great Commonwealth, where the Governor was loaded down with multifarious and exacting duties, some of which I have described, there is no room for any just or candid man to assert that he ought to have seen that which was concealed from notice, or to suspect that which was not suspected, or to smell rottenness which was so deeply buried as to be deodorized until exhumed by professional spades. He was not employed as a detective, he was elected to be Governor. When the charge was made in the midst of a political campaign, and but three months before the expiration of the Governor's term, that there had been crookedness in the Capitol accounts, he met it with promptitude and directness. He instantly called in the Auditor General, prepared and published a statement showing every cent which had been expended either by the Commissioners of Public Grounds and Buildings or by the Capitol

Commission in each and every way in connection with the building and equipment of the Capitol. This put the people in possession of the actual figures of expenditure. At the same time the Attorney General conducted an investigation to enable him to ascertain whether there was ground for instituting either criminal or civil proceedings against the contractors, the architect and the State officers. All of the papers on file were examined, a laborious and voluminous task, and all were found to be regular on their face. No facts, no testimony, no evidence which would be competent in a court of law were produced by the man who had made the charge. It was clear that deep probing would be necessary, and exhaustive and searching interrogatories were addressed to every one who had had the slightest connection with the contracts, and their written answers were obtained. Before the work could be completed the official terms of both the Governor and the Attorney General expired. A report was filed and printed covering three hundred and seventy pages of what had been done up to that time, dealing with "the evidence thus far submitted—and speaking of that only," a limitation which was persistently ignored by the public press, which failed to notice that the report was necessarily limited to the early stages of the inquiry and was not intended to be final and complete. After insisting on "the need for a very searching examination," and calling attention to the necessity of establishing fraud by the testimony of competent "experts in the line of the work criticised," the suggestion was made that "the contracts and the vouchers should be placed in the hands of an audit company, or experts well known," a suggestion which was acted on by the employment of the New York Audit Company, and the subsequent proceedings were based upon the very lines of inquiry instituted by the Governor and the Attorney General. No future study of the matter can be complete without careful examination of this preliminary

work. The spirit of the Governor shines forth electrically in his exclamation on the witness stand before the legislative investigating committee: "If we did not get good work, we were all deceived, and if the State has been defrauded it is an especially wicked thing. It would be, in my judgment, not only a fraud but a species of treason."

I have examined at length all the grounds of actual criticism of a great and good man. I state it deliberately and without qualification, there is nothing which furnishes a pretext for a charge of maladministration or of negligent administration. There never was a more painstaking or conscientious public servant than Samuel W. Pennypacker. He devoted his whole time and his full strength to the performance of his duties. He cherished no ambitions to be served by intrigue, he laid no traps, he planned no schemes, he stirred no factional quarrels, he meditated no vengeance. I do not claim for him infallibility of judgment. No one can claim that in this world of uncertain factors. I do not claim that his estimates of men were unerring, for he was too tender-hearted and unsuspicious to detect evil readily. I do not claim for him that uncanny distrust which avoids the snares which the unscrupulous spread, but which would convert a generous mind into an odious skeptic of the good in human nature, but I can and do claim that in conscientiousness he was unsurpassed. "A still and quiet conscience is a peace above all earthly dignities," or, as Old South puts it, in one of his sermons, "A palsy may as well shake an oak, or a fever dry up a fountain, as either of them shake, dry up, or impair the strength of conscience. For it lies within; it centers in the heart; it grows into the very substance of the soul, so that it accompanies a man to his grave; he never outlives it, because he cannot outlive himself."

**Public Service Commission.**

During the term of Governor Tener a Public Service Commission was established under the Act of 26th of

July, 1913 (P. L. 1374), consisting of seven members charged with the supervision, investigation and regulation of all railroads, canals, street railways, stage lines, express companies, baggage transfer companies, pipe lines, ferry companies, common carriers, Pullman car companies, tunnel companies, turnpikes, bridges, wharves, grain elevators, telegraph, telephone, gas, electric, water, heat, and refrigerating companies, and like public service companies within the State. The ample and elaborate powers given constituted the most extraordinary grant of power to a quasi judicial body that had ever been attempted in the history of the State, and called for men of the highest capacity and varied experience. Ex-Governor Pennypacker was one of those selected, became the president of the Commission and was in active service until within two months of his death. He died with his armor on.

**As a Collector.**

I cannot dwell upon Mr. Pennypacker's tastes, accomplishments and achievements as a book collector and a bibliophile without repeating what I have already said about them in an address recently delivered before The Philobiblon Club. It is sufficient to say that in these respects he was unique, and had he done nothing else he would be remembered by scholars as a remarkable man.

**Services to the Historical Society.**

I now turn to his services to this Society. The three administrations preceding that of Governor Pennypacker were notable for the large accessions of early Pennsylvania imprints, principally from the presses of William Bradford and his descendants, Reynier Jansen, Benjamin Franklin and his successors, Robert Bell, the Dunlaps, Joseph Cruikshank, Christopher Saur and his descendants, the Ephrata Community and Henry Miller; for the increase in membership on the removal of the Society to the "Picture House," on the Spruce Street front of the grounds of the Pennsylvania Hospital, and the purchase of the Patterson mansion.

Governor Pennypacker's administration of sixteen

years marks an epoch in the history of the Society. It should not be forgotten that we owe very largely to him the present enlarged building, through the assistance of State appropriations. He was distinctively qualified to fill the office of president by his experience as a vice-president and councillor, and the sympathetic interest he took in the objects of its organization; his profound and intelligent knowledge of the history of the Commonwealth, and the pride which he took in its elucidation, as shown by his numerous addresses and writings. Even during his absence of four years at Harrisburg, as Governor of the Commonwealth, his interest in its prosperity was never abated; he attended meetings of the Society and Council, and conferred with the Librarian on purchases of rare Americana and other matters pertaining to the Library. It was during this absence that the sale of the valuable collection of Americana of Bishop Hurst took place in New York. At his conference with the Librarian in the executive office, as both turned over the pages of their catalogues, his opinions were tersely expressed: "I would buy that," or " try to secure this work," and fortunately for the Society, many valuable additions were secured for its collections, one in particular being the personal Day Book of President Washington, kept during his occupancy of the Morris mansion on Market Street, the "White House" of the then Capital of the Nation. The additions to the collection of rare Americana were in nowise abated, but the increase in the Manuscript Division became unprecedentedly large and valuable.

It may be stated that the accession of books to the Library number 24,340 bound volumes, Letter-books 351, and Manuscripts, 166,134; among the latter, Penn and Penn-Physick, including miniatures of Admiral Penn and wife, with letters to the Founder; William Penn's Journals when in Ireland and Holland, and correspondence; there are also collections under the fol-

lowing names: Isaac Norris; James Logan; Pastorius; Franklin; Hamilton; Rawle; Wharton; Shippen-Burd; Washington; Wayne (Orderly Books, one of the 14th British Foot, captured at Stony Point, and papers relating to the Western Expedition); Cadwalader; Robert Morris; John Nixon; John Dickinson; Clymer; Reed-Forde; Gratz; Chaloner-White; Cox-Parrish; Wharton; Humphreys; Proud; John F. Watson; Sergeant; Hollingsworth-Morris; Governor George Wolf; Carpenter; Ashhurst; Hooper; Mendenhall; Jay Cooke; Alexander H. Stephens; and United States Bank and Northampton and Chester County documents.

The accessions to the Gilpin Library were 222 volumes of rare Americana; 28 Letter-books; 117 Manuscripts; 7 bound volumes of correspondence of Benjamin West and original drawings; Holmes' Map of Pennsylvania, 1681, as it came from the press, and General Duportail's original plan of the encampment at Valley Forge.

It may be stated here that there are 3877 bound volumes of manuscripts now on the shelves of the Manuscript Division, and material awaiting repair and binding sufficient to add 3000 volumes.

Governor Pennypacker's historical writings are models of careful research and devoted study; they have the power to hold the interest of the general reader and his admirable accuracy satisfies the exigencies of the student. He had an unrivaled acquaintance with all that had been published and an astounding amount of new and valuable unpublished information on the history of the Commonwealth. His translations are uniformly well performed, and the spirit of the original always faithfully preserved in its English translation. Referring to two of his recent works he wrote: "The entire edition of my 'Pennsylvania in American History' was sold within two weeks, and copies are now being bought at $10.00 each;" and that

'Pennsylvania the Keystone' has already gone through four editions, covering 12,000 copies."

As a Pennsylvanian.

Finally, he is to be considered as a Pennsylvanian. A Chinese philosopher once wrote: "He who sincerely loves his country leaves the fragrance of a good name to a hundred centuries." His State pride and his State patriotism were abnormal, I had almost said colossal. It did not spring from the sickly and bitter root of provincialism. It was not nourished by prejudice, nor did it thrive upon detraction or jealousy of the other parts of the country. It sprang from knowledge, from insight into the diviner meanings of those mysterious decrees of Providence which mixed in our latitude the martyred blood wrung from the suffering brows of Holland, Sweden, England, Scotland, Ireland. Wales, Germany, Switzerland and France, to be distilled by the fierce fires of revolution into the most precious elixir of the ages.

Consider, Pennsylvanians, of what a State ye are the citizens; a State which in its origin was the sanctuary to which the persecuted of all creeds and races fled for safety; a State inspired by Mercy, Justice, Truth and Peace; upon whose soil were fought those battles in colonial, revolutionary and fratricidal days, which determined the course of critical events; and in whose holiest shrine were composed and adopted those documents which chart the channels of national power; a State from whose veins of wealth and from whose roaring looms the labor of the world is quickened; a State of struggle and achievement; and of the most generous humanities in the service of mankind; a State whose history ought to stir the hearts, uplift the pride, and command the love of all her loyal sons and daughters.

It was this State which your late President knew and thoroughly understood; whose reputation he was ever ready to defend against disloyalty or ignorance, and whose interests he faithfully served until the shaft of the insatiate archer struck him down.

# APPENDIX A

*Pamphlet Laws of Pa. 1903—p. 349.* } No. 265

"AN ACT

"To authorize civil actions for the recovery of damages arising from newspaper publications negligently made; defining the character of such damages; and requiring every newspaper published in this Commonwealth to print, in a conspicuous place in each issue, the names of the owners, proprietors or publishers, and the managing editors of the same; and making a violation of this act a misdemeanor, and fixing a penalty therefor.

"SECTION 1. Be it enacted &c., That from and after the passage of this act, civil actions may be brought against the proprietor, owner, publisher, or managing editor of any newspaper published in this Commonwealth, whether the same be published monthly, bi-weekly, semi-weekly or daily, to recover damages resulting from negligence on the part of such owner, proprietor or managing editor in the ascertainment of facts and in making publications affecting the character, reputation or business of citizens.

"SECTION 2. In all civil actions which may be hereafter brought against the proprietor, owner, publisher or managing editor of any newspaper published in this Commonwealth, whether the same be published monthly, bi-weekly, semi-weekly or daily, and whether such owner be an individual, partnership, limited partnership, joint-stock company, or corporation, if it shall be shown that the publication complained of resulted from negligence on the part of such owner, proprietor, manager or editor, in the ascertainment of the facts or in the publication thereof, compensatory damages may be recovered for injuries to business and reputation

resulting from such publication, as well as damages for the physical and mental suffering endured by the injured party or parties; and whenever in any such action it shall be shown that the matter complained of is libelous, and that such libelous matter has been given special prominence by the use of pictures, cartoons, headlines, displayed type, or any other matter calculated to specially attract attention, the jury shall have the right to award punitive damages against the defendant or defendants.

"SECTION 3. That from and after the passage of this act, each and every newspaper published in this Commonwealth, whether the same be published monthly, biweekly, semi-weekly or daily shall publish in every copy of every issue, on the editorial page, in a conspicuous position, at the top of reading matter, the name of the owner, owners, proprietor or proprietors of such newspapers, together with the name of the managing editor thereof; and if said newspaper or newspapers shall be owned or published by a corporation, then the name of the corporation shall be published, together with the names of the president, secretary, treasurer, and managing editor thereof; and if the said newspaper or newspapers shall be owned or published by a partnership or partnership limited, then the names of the partners, or officers and managers, of said partnership or partnership limited, shall be published in like manner.

"SECTION 4. In the event of any change being made in the proprietor, owner, publisher or managing editor of any newspaper, or in the office of president, secretary or treasurer of any corporation owning and publishing said newspaper, or any change in the name of the co-partners, the said change or changes shall be duly set forth in the next edition, or issue, of said newspaper, following said change or changes.

"SECTION 5. Any person, firm, limited partnership

or corporation, publishing a newspaper in Pennsylvania, which omits, fails or neglects to carry out the provisions of sections three and four of this act, and make the publication required by the preceding sections, shall be guilty of a misdemeanor; and upon conviction thereof shall be fined not less than five hundred dollars, nor more than one thousand dollars.

"SECTION 6. All acts or parts of acts inconsistent herewith be and the same are hereby repealed.

"Approved—The 12th day of May, A. D. 1903."

THE GOVERNOR'S MESSAGE OF APPROVAL.

"The questions raised by the Senate Bill No. 690 are of very grave importance. They affect large business interests, the freedom of speech and the press, the right of the citizen to be informed concerning current affairs and the conduct of government, as well as his right to protect his reputation and home from the injuries that result from careless or negligent, as well as malicious false report. They are of importance for the further reason that, whichever way decided, the fact that they are raised indicates a widespread dissatisfaction with existing conditions, and their correct decision is likely to have an effect within and without the Commonwealth. They are deserving, therefore, of the most careful consideration, and the conclusion, unaffected by any personal feeling and unswayed by any fear of personal consequences, ought to be reached upon the plane of what will be for the good of the people.

Few persons have read or have had the opportunity of reading the provisions of this bill. In order that the opportunity may be given, I quote the language in full as follows:

"That from and after the passage of this act, civil actions may be brought against the proprietor, owner, publisher or managing editor of any newspaper pub-

lished in this Commonwealth, whether the same be published monthly, bi-weekly, semi-weekly, or daily, to recover damages resulting from negligence on the part of such owner, proprietor or managing editor in the ascertainment of facts and in making publications affecting the character, reputation or business of citizens.

"SECTION 2. In all civil actions which may be hereafter brought against the proprietor, owner, publisher or managing editor of any newspaper published in this Commonwealth, whether the same be published monthly, bi-weekly, semi-weekly or daily, and whether such owner be an individual, partnership, limited partnership, joint stock company or corporation, if it shall be shown that the publication complained of resulted from negligence on the part of such owner, proprietor, manager or editor, in the ascertainment of the facts or in the publication thereof, compensatory damages may be recovered for injuries to business and reputation resulting from such publication, as well as damages for the physical and mental suffering endured by the injured party or parties; and whenever in any such action it shall be shown that the matter complained of is libelous, and that such libelous matter has been given special prominence by the use of pictures, cartoons, headlines, displayed type, or any other matter calculated to specially attract attention, the jury shall have the right to award punitive damages against the defendant or defendants.

"SECTION 3. That from and after the passage of this act each and every newspaper published in this Commonwealth, whether the same be published monthly, bi-weekly, semi-weekly or daily, shall publish in every copy of every issue, on the editorial page, in a conspicuous position at the top of reading matter, the name of the owner, owners, proprietor or proprietors of such newspapers, together with the name of the managing editor thereof; and if said newspaper or newspapers shall be owned or published by a corporation, then the name of the corporation shall be published, together with the names of the president, secretary, treasurer and managing editor thereof; and if the said newspaper or newspapers shall be owned or published by a partnership or partnership limited, then the names of the partners, or officers and managers, of said partner-

ship or partnership limited, shall be published in like manner.

"SECTION 4. In the event of any change being made in the proprietor, owner, publisher or managing editor of any newspaper, or in the office of president, secretary or treasurer of any corporation owning and publishing said newspaper, or any change in the name of the co-partners, the said change or changes shall be duly set forth in the next edition, or issue, of said newspaper following said change or changes.

"SECTION 5. Any person, firm, limited partnership or corporation, publishing a newspaper in Pennsylvania, which omits, fails or neglects to carry out the provisions of sections three and four of this act, and make the publication required by the preceding sections, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars nor more than one thousand dollars.

"SECTION 6. All acts or parts of acts inconsistent herewith be and the same are hereby repealed."

There is nothing in the terms of the bill which prevents any newspaper from making such comments upon legislative measures or upon the official acts of State, municipal, county or public officers as are proper for the information of the public or are in the line of legitimate public discussion. There are no inhibitions in the bill. It subjects all preliminary inquiries as to facts and their subsequent publication to the test of care. The doctrines of the law of negligence are well known and apparently easy of application. Haste and recklessness in the ascertainment of facts prior to publication, or in the manner of publication, amounting in the judgment of a court to negligence or the want of that degree of care which a man of ordinary prudence would exercise under the circumstances, will, if proved, give a ground of action for such damages as result from injuries to business and reputation. There is no interference with "privileged communications."

The bill in its application is not confined to officials, but affects as well the citizen or business man, whose

conduct constitutes no part of the right of the public to information. The corporation officer who has been falsely charged with crime; the manufacturer who has been falsely accused of being a drunken brawler; the woman whose domestic griefs have been unfeelingly paraded, or whose chastity is improperly suspected; the student who has been falsely accused of murder; the clergyman who has been cruelly maligned; the quiet citizen whose peace of mind has been destroyed by the publication of evil gossip; the merchant whose credit has been affected by groundless rumors; the sufferers from reckless but not necessarily malicious publications, are given the right, not to prohibit publication, but to recover the damages which they have sustained, provided they prove negligence or lack of care on the part of the publishing newspaper. All of these are instances of what has in fact recently occurred.

Within a few days, in a leading article on the first page of a daily journal, under large headlines, upon a rumor of unknown source as to the name of a suggested appointee to the position of Prothonotary of the Supreme Court, when no appointment had been made and no utterance, official or otherwise, had emanated from any member of that court, that high tribunal was subjected to a covert assault under the words "Machine After Control of the Supreme Court."

A mayor of our chief city has been called a traitor, a senator of the United States has been denounced as a yokel with sodden brain, and within the last quarter of a century, two Presidents of the United States have been murdered, and in each instance the cause was easily traceable to inflammatory and careless newspaper utterance. A cartoon in a daily journal of May 2d defines the question with entire precision. An ugly little dwarf, representing the Governor of the Commonwealth, stands on a crude stool. The stool is subordinate to and placed alongside of a huge printing press

with wheels as large as those of an ox-team, and all are so arranged as to give the idea that when the press starts the stool and its occupant will be thrown to the ground. Put into words, the cartoon asserts to the world that the press is above the law and greater in strength than the government. No self-respecting people will permit such an attitude to be long maintained. In England a century ago the offender would have been drawn and quartered and his head stuck upon a pole without the gates. In America to-day this is the kind of arrogance which "goeth before a fall."

If such abuse of the privileges allowed to the press is to go unpunished, if such tales are permitted to be poured into the ears of men, and to be profitable, it is idle to contend that reputable newspapers can maintain their purity. Evil communications corrupt good manners. One rotten apple will ere long spoil all in the barrel. The flaring headlines, the meretricious art, the sensational devices and the disregard of truth, in time will creep over them all. Men are affected by proximity and professional sympathy. When recently a verdict of $25,000 was rendered against a journal for libel, this entirely proper item of news only reached the public by the methods of a hundred years ago. It was unpublished, and each man whispered the fact to his neighbor. It is equally idle to contend that untrue statements and vicious assaults produce no effect and that the upright are unharmed. A whole generation of young men are being trained to a familiarity with crime and to disrespect for government. Even the Legislature recently, by an act which passed both Houses, held the threat of imprisonment over justices of the peace for what would have been at most only a neglect of duty. Bishops, too, hurry into print without investigation, and with only such information as comes from muddy sources, to express their disregard for those whom the people have entrusted with authority. Both

incidents indicate a tone which is already too prevalent and is being steadily cultivated to the public detriment. Were a stranger from Mars by some accident to read our daily press, he would conclude that the world is inhabited by criminals and governed by scoundrels. It is sad to reflect that some historian of five hundred years hence, misled by what he reads, will probably study the statesman whom we know to be able and strong, generous and kindly, keeping his promises and paying his debts, and depict him with the features of an owl and the propensities of a Nero or Caligula. The motive which leads to the degradation of the press is very plain and by no means unusual. It is the same motive which causes men to put deleterious chemicals into food, weak iron into the boilers of engines, and wood into the flues of houses,—the desire to produce cheaply in order that there may be a profitable sale. There is no animosity toward the poor creature who may take copperas into his stomach or scandal into his mind, but the willingness to do injury for a reward needs the supervision and restraint of the law in each instance alike. Where the conscience of the individual is too hardened to prevent him from going astray, where trade associations have become a bond of sympathy rather than a curb for wrong conduct, and injuries are inflicted upon others, then the law ought to lay its heavy hand upon those who offend, whether they be weak or whether they be strong. It is not the individual attacked who is alone concerned. The Commonwealth is interested that those who render her service should be treated with deference and respect, so that when they go forth in the performance of her functions those to whom they are sent may feel that they are vested with authority. Let there be no mistake about it. In the long run, society always finds a way to protect itself. For continual, persistent public violation of the law, the publication so offending may be abated by the courts as a public nuisance.

When, during the war of the Rebellion, a New York journal forged a proclamation with the name of the President attached to it, to the great injury of the nation then in the midst of a struggle for life, Mr. Lincoln promptly suppressed the publication. The liberty of the press to scatter injurious falsehood no more bound him than the withes bound Samson. He established a precedent which no doubt will be followed in the future should a like occasion demand it. The existence and growth of the evil is recognized by all observing men, has been pointed out in repeated warnings by the Supreme Court, and was frankly acknowledged by the representatives of the press at the hearing upon the present bill. I listened in vain to hear any remedy they might be able to suggest. Many years' experience on the Bench has led me to the conclusion that crimes are widely propagated not by the malice but by the recklessness of the press, and that in certain classes of cases, among them murder, the accused were at times convicted or acquitted before they reached the court room. But for the unfortunate decision that the Legislature could limit the courts in imposing punishment for contempt to acts occurring within the court room, as though violation of an order had some relation to doors and windows, the courts could have prevented this interference with the performance of their functions and this aggression upon personal liberty. Such a condition of things is much to be deplored and it ought to be prevented if possible. The bill offers as a remedy for these ills, or some of them, the application of the principles of the law of negligence to the publication of newspapers. All that this means is that they shall exercise "reasonable care" in the ascertainment of facts and the announcement of comment which may injuriously affect the reputation or business of other people. It is a law of almost universal application in the affairs of men. When we walk the streets or drive

a horse, or light a fire or make a shoe or build a house, we must take care that we do not cause harm to others. It applies to the gatherer of garbage. Why should it not apply to the gatherer of news? It applies to the lawyer, the doctor and the dentist, in the exercise of his profession. Why should it not apply to the editor? It is impossible to give any logical reason which will bear examination why they should be exempt. The damages provided for by the bill follow the ordinary rule of damages for want of reasonable care. When a man is bitten by a dog or gored by a bull, or cut or burned, or overturned or is run over by a hand cart or street car, through negligence, he may recover compensation for physical and mental suffering. This measure of damage is peculiarly applicable and in fact essential in the cases of injuries intended to be guarded against by the bill. When a woman is falsely called a strumpet, it does not break her arm or rob her of her wardrobe. It hurts her feelings, and if she cannot get compensation for her mental suffering she can get nothing. If malicious untruth is emphasized by picture and headline, punitive damages are awarded. Is there any good reason to the contrary? If a man gouges out the eyes or rubs pepper into the wounds of his adversary, or cuts the tongue out of his neighbor's horse, the damages are always left to the discretion of a jury.

An upright and worthy gentleman, trained to the law, who has worn a sword in the service of his country, and who bears a name honored in Pennsylvania for more than two hundred years because of its connection with an impressive and heroic event, is sent by the people to the Legislature, and in the performance of his duty and upon the responsibility of his oath introduces a proper bill which is not agreeable to the press. It is not shown that the bill would be harmful or unwise. The policy is not confronted with argument pointing out its error or weakness. But some outcast is hired

to pervert his name from Pusey into "pussy" and to draw contorted cats which are scattered broadcast over the land in the hope that the vile and vulgar will snicker at his wife and children when they pass. Could the most just and kindly of judges, could any friend of the press meaning to be fair, say that should he bring suit against the newspapers which committed this outrage and indecency he ought not to be permitted to recover what a jury shall regard as compensation?

The bill provides, under penalty, that the names of the owner, proprietor, publisher and managing editor shall be printed with each issue. The purpose of the provision is that it may be known who is responsible for the publication. Every business man prints upon his bills and letterheads and puts in front of his store, his name. Every doctor and every lawyer puts his name on his office door. The law provides that a record shall be made, open to the public, of those who compose partnerships and limited partnerships. And yet every day pages of material are printed purporting to be a record of current affairs of the world, and claiming the right to sit in supervision upon the courtesies of the parlor and the doings of public officials, and no one knows what their origin, whence they come, who is he who writes them or who is responsible for them. If the vendor of a horse were to insist upon wearing a mask so as to escape identification, who would buy of him? The Veiled Prophet, though preaching about piety and virtue, was so veiled because both hideous in appearance and libertine in conduct. No harm and much good may come from requiring such publicity. These are all of the provisions of the bill, and no one of them would seem to be uncalled for, unjust or unduly harsh.

Since the Constitution of this State, in its declaration concerning liberty of the press, directs that there shall be responsibility "for the abuse of that liberty," and since the test is that publications shall not be "mali-

ciously or negligently made," it would appear to be in entire accord with that instrument that newspapers should be held accountable in damages for negligence. Some technical objections are made to the bill. It is urged that since weekly newspapers are nowhere mentioned, it offends against that provision of the Constitution which prevents special legislation. A careful examination shows that the enacting clauses are in general words, "each and every newspaper" and "any newspaper," and that the enumeration of the different kinds of newspapers is mere description and unessential. The omission of the word "weekly" was unwise but in no sense fatal. If hereafter a newspaper should be issued every other day or twice a day, and thus not be included in the descriptive words used, it would, as well as the journals published weekly, be covered by the general enacting words, and be subject to the provisions of the bill. All of the provisions relate to one general subject and appear to be sufficiently described in the title. It is further urged that the bill ought not to become a law because not read upon three several days in the House of Representatives before its final passage. If it was not so read, then undoubtedly there was a failure upon the part of the House to perform its duty. Whenever, however, the bill is signed by the President of the Senate and the Speaker of the House, it is an official certificate that it has been passed in accordance with the constitutional requirements and the rules governing the action of those bodies. But little thought is needed to see that the Governor has no responsibility for, and can exercise no supervision over, the manner of the deliberations of the Legislature. He has no part or parcel in them, he has no place on the floor, and save by report and unofficially has no knowledge of what occurs there, except as they give it to him. The two houses constitute a separate branch of the government, and were he to interfere it would be an encroachment and lead to

untold commotions. He can no more dispute their certifications than could they inquire into his motives for signing a bill or withholding his approval. If they should assert that it was properly passed and he should assert to the contrary, who is to decide the disputed question of fact, he who officially knows nothing about it, or they who are given the power? If it is proper legislation in correct form, how could he justify himself in disapproving it on the ground that the motives were impure or the manner of passing it informal? In the case of Kilgore vs. Magee, 85 Penna. 412, where it was alleged that the bill had not been read three times, the Supreme Court said that the duty of seeing that this mandate was observed was solely that of the members, and further: "In regard to the passage of the law and the alleged disregard of the forms of legislation required by the Constitution, we think the subject is not within the pale of judicial inquiry." This furnishes a safe rule to follow. The purpose of the reading upon three different days is not to allow time for those interested to impress their views upon the legislators, but to insure that the legislators have the opportunity for hearing and voting advisedly. In the present case there was more than the usual opportunity given for preliminary discussion by the people. Some such legislation was recommended in the Inaugural address. A bill concerning cartoons was introduced early in the session and widely published. This bill was read three times in the Senate and once in the House. A similar bill had been read twice in the House when the present bill was substituted, so that if the allegation of irregularity be correct, at least we can be assured that the action taken was preceded by numerous forewarnings.

The proposed legislation has been regarded by a large proportion of the reputable press with great misgivings. It is natural that this should be the case. The future is ever uncertain, and the easy way to avoid the dangers ahead is to stand still. This is nevertheless

not a wise course. The boy conscious of many lapses, who is invited by a stern father into a private room, enters with a vague dread, and yet the purpose may only be to arrange for the coming holidays. When the gardener comes with his hoe into the garden which has been left to run wild, it is safe to say that it is the mullein and not the pea which is likely to suffer.

This bill may not be the best possible legislation, but the purpose is commendable, and should experience show it to be defective, something better may be devised. It ought to be cordially and cheerfully accepted by the reputable press, for they have a special interest in its becoming a law. Where the tares occupy the ground, the wheat perishes. It threatens them with no danger. Seeking to utter the truth and not the falsehood, what have they to fear? Into our courts where learned judges administer the law with fidelity and juries are drawn from the masses of the people well fitted to determine who is the wrongdoer, they are not likely to be summoned, or if summoned they may go with entire safety. This much is certain. Since the laws of God and nature are immutable and inexorable, unless means are found to uproot some of the tendencies of modern journalism confidence already badly shaken will be utterly lost, and the influence of the press, which has been so potent an agent in the development of civilization and in securing civil liberty, will be gone forever.

With a serious sense that the event is of more than ordinary moment, with full knowledge of the importance of the press, and of its value to mankind through all past struggles, and with the hope and belief that the greater care and larger measure of responsibility brought about by this law, tending to elevate the meritorious and repress the unworthy, will promote its welfare while benefiting the community, I approve the bill.

SAML. W. PENNYPACKER.

## APPENDIX B

*Pamphlet Laws of Pa. 1905—p. 390.* } No. 242

"AN ACT

"To amend an act, entitled 'An act to provide for the better government of cities of the first class in this Commonwealth,' approved the first day of June, Anno Domini one thousand eight hundred and eighty-five, by amending section one of article three of said act, by vesting in the Director of the Department of Public Safety certain powers, therein given to the Mayor; and amending section one of article twelve of said act by providing for the election of the Director of the Department of Public Safety and the Director of the Department of Public Works by the members of the select and common councils of cities of the first class, and providing for their removal.

"SECTION 1. Be it enacted, &c., That so much of section one, article three of the act, entitled 'An act to provide for the better government of cities of the first class in this Commonwealth,' approved the first day of June, Anno Domini one thousand eight hundred and eighty-five, which reads as follows:

"SECTION 1. No policeman or fireman shall be dismissed without his written consent, except by the decision of a court either of trial or of inquiry duly *determinated and certified in writing to the mayor,* which court shall be composed of persons belonging to the police or fire force equal or superior in official position therein to the accused. Such decision shall only be determined by trial of charges with plain specifications made by, or lodged with, the Director of the department of public safety, of which trial the accused shall have due notice, and at which he shall have the right to be present in person. The persons composing such court shall be appointed and sworn by the director of the

department of public safety to perform their duties impartially and without fear or favor, and the person of highest rank in such court shall have the same authority to issue and enforce process to secure the attendance of witnesses, and to administer oaths to witnesses, as is possessed by any justice of the peace in this Commonwealth,' shall be amended to read as follows:

"SECTION 1. No policeman or fireman shall be dismissed without his written consent, except by the decision of a court either of trial or of inquiry, *of which decision notice shall be given, in writing, to the Director of the Department of Public Safety,* which court shall be composed of persons belonging to the police or fire force equal or superior in official position therein to the accused. Such decision shall only be determined by trial of charges, with plain specifications made by, or lodged with, the Director of the Department of Public Safety, of which trial the accused shall have due notice, and at which he shall have the right to be present in person. The persons composing such court shall be appointed and sworn by the Director of the Department of Public Safety to perform their duties impartially and without fear or favor, and the person of highest rank in such court shall have the same authority to issue and enforce process to secure the attendance of witnesses, and to administer oaths to witnesses, as is possessed by any justice of the peace in this Commonwealth.

"SECTION 2. That so much of section one, article three of said act, which reads as follows:

'SECTION 1. The finding of the court of trial or inquiry, as aforesaid, shall be of no effect until approved by *the Mayor,*" shall be amended to read as follows:

"SECTION 1. The finding of the court of trial or inquiry, as aforesaid, shall be of no effect until approved by *the Director of the Department of Public Safety.*

"SECTION 3. That so much of section one, article twelve of said act, which reads as follows:

*'Section 1. The mayor shall nominate and, by and with the advice and consent of the select council, appoint the following officers, who shall hold office during the term for which the appointing Mayor was elected, and until their successors shall be respectively appointed and qualified:*

I. *The Director of the Department of Public Safety.*

II. *The Director of the Department of Public Works,* shall be amended to read as follows:

"SECTION 1. *The Director of the Department of Public Safety and the Director of the Department of Public Works shall be elected by a vote of a majority of all the members of select and common councils of said cities, in joint session, for a term of three years, and until their successors shall be respectively elected and qualified, and shall be subject to removal by a vote of a majority of all the members of the select and common councils in said cities, in joint session.*

"SECTION 4. This act shall not take effect until the first Monday of April, Anno Domini one thousand nine hundred and seven.

All acts or parts of acts inconsistent herewith are hereby repealed.

Approved—The 5th day of May, A. D. 1905.

SAML. W. PENNYPACKER.

THE GOVERNOR'S MESSAGE OF APPROVAL AND DISAPPROVAL.

"I file herewith, in the office of the Secretary of the Commonwealth, with my objections, Senate bill No. 479, entitled, 'An act to amend section five of an act,' entitled "A supplement to an act, entitled 'An act to provide for the better government of cities of the first class in this Commonwealth, amending articles two, three, ten and twelve, and providing for a Department

of Public Health and Charities, in lieu of the Department of Charities and Correction,' approved the eighth day of April, Anno Domini one thousand nine hundred and three, so as to provide for the election of the Director of the Department of Public Health and Charities by the members of the select and common councils of said cities and providing for his removal."

Senate bills Nos. 441, 479 and 480, all relating to the government of cities of the first class, may well be considered together. We are told in Genesis that when Jacob wanted to deceive his father into conferring upon him the blessing which was intended for Esau, he covered his hands and his neck with goatskin. It generally happens in all serious inquiries that it is necessary to look beneath the mere surface indications if we are earnestly desirous to reach a correct conclusion. The act of March the 7th, 1901, "for the government of cities of the second class," in effect annulled the previous charters of those municipalities. It abolished the office of mayor, and provided a chief executive to be called the city recorder, and to be temporarily appointed by the Governor. It removed from office the mayor who had been elected by the people. It provided for a concentration of authority in the hands of the city recorder, who was given the power to appoint the heads of five of the principal departments, as well as the members of the sinking fund commission. This act became known even in the decisions of the courts as a "ripper." When the constitutionality of the act was assailed, the Supreme Court decided that the power of the Legislature was unquestionable, and its exercise depended upon legislative discretion. The present bills raise no constitutional query and they are in every respect the exact antitheses of this act. They are so drawn as not to take effect until the first Monday of April, 1907, and, therefore, do not affect any present incumbents. They remove no official from office. They

interfere with no one elected by the people. Instead of concentrating power, their effect would be to disseminate it. They provide that certain heads of departments, instead of being appointed by the mayor under existing laws, shall be elected by the members of councils, and in this way give the people much greater control over these heads of departments. The mayor is now elected for a term of four years, and during this period is beyond the reach of the people, except through the process of impeachment. The members of councils are in large part elected each year, and at the end of two years all of the members of common council, and at the end of three years all of the members of select council, may be changed. The provision that the bills shall not go into effect until the first Monday of April, 1907, is in the nature of a referendum, for the reason that, if these bills should not be approved by the people, disapproval can be expressed in the election of members of the Senate and House, who will have ample time before the date named to have the acts repealed. The principles they invoke are much larger and broader than the affairs of any municipality, and the contest that has resulted is the manifestation of a struggle which has been waged throughout the existence of all governments, past and present, and is not yet determined. Whether it is more conducive to the welfare of human society, and to the development of good government and its proper administration, to have power concentrated in an individual, and responsibility fixed, or to have it vested in representatives of the people, whose tenure depends upon their carrying out the popular will, is still an open question. The history of most nations, states and municipalities, shows that there has been a continual shifting from one system to the other, as the evils which have resulted from each by long continuance have impressed themselves upon the people. Whether Charlemagne, building up an empire which

meant the rehabilitation of Europe, or Abraham Lincoln, representing a government of the people and by the people, was the more beneficent in his work, may be open to discussion. Whether Nero, setting fire to Rome for the amusement of an emperor, or Robespierre, cutting off the heads of his enemies in the name of the populace, was the more harmful, is equally uncertain. In France, the efforts of the Bourbons to concentrate power was followed by the Revolution, and that again by the empire of Napoleon. In England, the arbitrary exercise of authority by the Stuarts was followed by the establishment of the Commonwealth under Cromwell, and thereupon succeeded the restoration and the limited monarchy of 1688. So far as we can gather light from the experience of the past, the concentration of power seems to be the more dangerous. There have been few instances of such dissemination of power as to lead to anarchy, and these, like the revolt of the Anabaptists of Munster, and the French Revolution, have been of brief duration, but instances in which all authority has been grasped by individuals to the public disadvantage have been very numerous. Pope sought a solution of the problem by writing:

> "For forms of government let fools contest,
> That which is best administered is best."

In this country the opposite currents of thought have been in existence, and have alternated in control ever since the adoption of our national constitution. The efforts of Washington, Hamilton and Adams to concentrate executive authority led, in a few years, to the overthrow and destruction of the Federalist party. The Democrats and Jefferson, advocating the other view, then came into power and for fifty years, in the main, had control of the government. For the last forty years the drift has been in the opposite direction; but who can say that we have reached a final solution of the problem? At the present time the tendency in

the national government is toward a concentration of power, and in the different state governments the current is running in the direction of entrusting executive authority to the representatives of the people. The most thoughtful observers and those most familiar with the practical difficulties of the subject would probably concede that it would be better for the administration of public affairs in Philadelphia if the power, which is given by existing laws to the mayor, could be, in certain directions at least, lessened. He has, in effect, absolute control over the contracts for all the public work, over an army of police and attendants, and over all the affairs of the municipality. He, in substance, has the appointment of officials, of greater or lesser importance, estimated to be in number from seven thousand to twelve thousand. If this great authority could be exercised intelligently, and only as a trust for the good of the people, it would undoubtedly be the best system of government; but if, unfortunately, it should fall into corrupt or even incapable hands it would prove to be the very worst. One of the most important principles of all good government is the proper maintenance of the distinction between legislative and executive functions, and one of the gravest dangers to be feared is the absorption through encroachment of the functions of one department by the other. Such encroachment may come from the executive as well as from the legislative branch of government. The authority of the mayor can be exercised in such a way as not only to be felt in the legislation of councils, but to dominate them. The seat of the councilman, which he holds for a very brief period, is dependent upon the good will of the mayor, and he can hardly be expected to resist the influence when called upon to legislate. The power of the mayor, should he fail to exercise conscientious self-restraint, may be used also in politics. In this aspect of the matter, the bills are of importance to the whole

Commonwealth, for the reason that Philadelphia, with its large delegation in the legislature and in political conventions, has a great influence in determining questions which affect the State. Since the passage of the Bullitt Bill, one mayor of Philadelphia sought to become the President of the United States. Another was selected for the special purpose of overthrowing the then existing political control of the Commonwealth, and the effort very nearly succeeded. Such conditions and such possibilities certainly give rise to proper apprehension. While there is great difference of view as to the propriety of the proposed legislation, undoubtedly many of those most capable of judging correctly are of the opinion that the present system has not proved to be, upon the whole, advantageous to the municipality. The most influential political leader in Philadelphia is of the opinion that it has proven to be harmful. Since he has had long experience, and the opportunity for close observation, his conclusions are, at least, entitled to careful consideration. Many of the most competent lawyers are in accord with this view. It has been announced far and wide over the land, and is believed by many good people, that, under the succeeding mayors, contracts for public work have been awarded to corrupt favorites, that the police have been in league with the keepers of dives and bawdy-houses, and that these improper relations have been supported by those in authority. However much we may disbelieve these charges, and however much we may deprecate their inconsiderate publication, they nevertheless indicate a dissatisfaction, upon the part of those who make them, with existing conditions. Upon this important subject, upon which men may well differ in their conclusions, the Governor is urged to reverse the determination of the Senate and House, in which all of the representatives of Philadelphia, in both Senate and House, participated. The Constitution gives the

Governor a power of veto, but it was never intended to be an absolute veto. If he disapproves of a measure it may nevertheless become a law by a vote of two-thirds of the members of both Senate and House. It is true that after adjournment of the Assembly he may disapprove of the bills which then remain, but this provision was intended only to prevent the manifest inconvenience of inaction. It was supposed by those who drafted the Constitution that bills would be considered by the Assembly during its session, that few would be left at its close, and for them it would be necessary to make provision. The effect of leaving the mass of legislation until the closing days of the session gives to the Governor an absolute power of negation which was never intended, and, incidentally, it may be said that at some time great harm will result to the Commonwealth because of this practice. We must not, however, lose sight of the principle that the Governor's veto was expected only to extend to those measures which might not receive a two-thirds vote of the Senate and House. For him to exercise his power arbitrarily with respect to the question raised by these bills, would be indeed to assume an unusual and illogical position. This question is not one of ordinary legislation, but it goes to the very foundations of government, involving all the interests, not only of this municipality, but the principles which affect all civilizations. For the change of the method of government in this municipality much more than two-thirds of each House have voted. If the absolute control of affairs in Philadelphia by an individual were to be preserved, over the almost unanimous vote of the Assembly and of the representatives of Philadelphia to the contrary, by the autocratic exercise of the incidental power of the Governor, it might well be a cause both for uneasiness and for complaint.

Having now reached a decision as to the line of thought which ought to determine the action of the

Governor upon the main question, this qualification yet remains to be made. Whatever system of government may be the better, it is certainly true that a radical and sudden change from one plan to another is always accompanied with disturbances and disadvantages. In my view it would be wiser to lessen the power of the mayor. It would be wiser not to take it away. There is a certain propriety in having the Director of Public Works, who has charge of the contracts for which councils make the appropriations, subject to the control of councils. There is also a certain propriety in having the Director of Safety, who has charge of the police and the maintenance of the peace, appointed by the mayor, who is responsible for good order. Had there been four separate bills, one for each department, this thought could have been enforced, but in the shape they have come to me it is impossible to secure such a result. Nevertheless a modification of the proposed plan it is possible to make, by approving the bill which changes the method of selecting the Directors of the Departments of Public Works and Public Safety, and disapproving the two bills which change the method of selecting the Directors of the Departments of Supplies and of Public Health and Charities. The maintenance of a proper conservatism in the conduct of important affairs is a different proposition from an interference with the determination of a fundamental principle of government by the Legislature. Should further changes in the method of appointing directors prove by experience to be necessary or advantageous, they can be made at some future session.

For these reasons I approve Senate bill No. 441, and disapprove of Senate bills Nos. 479 and 480, the 5th day of May, A. D. 1905."

SAML. W. PENNYPACKER.

# APPENDIX C

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